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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

SAMUEL ALBERT REED,	)	
Plaintiff	)	
vs.	)	CIVIL ACTION NO.
	)	
PHILIP MORRIS INCORPORATED,	)	96-050750
et al.,	)	
Defendants	)	

Deposition of **JAMES MYRACLE, JR.**, taken on Tuesday, April 29th, 1997, at 10:00 a.m., at the law offices of Hunton & Williams, 951 E. Byrd Street, Richmond, Virginia, before E. Duane Smith, Registered Professional Reporter.

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STIPULATION

It is stipulated and agreed by and between counsel for the respective parties that the filing of this deposition with the Clerk of Court is hereby waived.

MR. HEIM: Prior to questioning, counsel want to make a statement about how we are going to deal with confidential information and possibly highly confidential information in light of the order that was entered yesterday or which the judge yesterday said he was going to enter with regard to a protective order. In short, what we have agreed to is this:

This deposition will be treated as confidential under the terms of the protective order for all purposes, and that includes briefing purposes as well. We will comply with the protective order in terms of the ten-day requirement for designating specific lines and pages, and beyond that, we will make an effort to

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provide counsel for plaintiffs, in advance of the ten days, with any portions of the deposition which are to be designated as highly confidential. I think that pretty much covers the way we are going to deal with this for today's purposes, since the order was just entered yesterday, and counsel for plaintiffs do need to have access to the transcript for purposes of the briefing in this case, and under the terms of the order, unless we were to proceed in this manner, would not have access to the transcript for ten days.

MR. ANGELOS: So it is clear, our understanding is that the deposition will go forward today, it is confidential, we will get a copy of the transcript as soon as possible, so we can use it for the class cert brief due on May 1st. The brief will be filed under seal with the court, and we may use all information, that is all testimony elicited today in the brief for May 1st, and based upon after the defendants evaluate and adjudge the level of confidentiality in certain

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testimony, then certain portions or the briefs and the testimony can be placed in a manner that they feel is appropriate, we can use all information here today in our brief.

MR. HEIM: Right. Again, just so that we are all on the same page with regard to this, with regard to the brief that you will be filing on May 1st, John, I understand that any reference to this deposition will be treated under the confidentiality provisions of that order, that is it will be submitted in the way the order provides for confidential information to be submitted.

JAMES MYRACLE, JR.,

being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION BY MR. EDELL:

Q. Myracle?

A. Myracle.

Q. We introduced ourselves before, and my name is Marc Edell, co-counsel with respect to some

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of the plaintiffs in this case. Your name was originally given to us as an expert witness in this case. I understand that he is no longer designated as an expert witness.

MR. HEIM: That's correct. The only difference I have with you is that to my knowledge, he was never designated as an expert. There may be a misunderstanding about that, but to my knowledge, he was never designated as an expert.

MR. EDELL: I guess that's an objection to my statement. We were under the apparent misconception that you would be an expert witness in this case. That is now clarified and you are appearing as a fact witness, do you understand that?

A. Yes.

Q. Ever been deposed before?

A. Yes.

Q. In a cigarette and health case?

A. I don't think so.

Q. How many cases have you been deposed in?

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A. Two.
Q. What was the nature of those cases?
A. One was a case called Tiriana. The other case was a patent infringement case.
Q. What was Tiriana?
A. Tiriana had to do with potential contamination of some materials we purchased.
Q. Your educational background is in mechanical engineering; is that correct?
A. I have a bachelor's degree in mechanical engineering.
Q. You didn't start with Philip Morris until 1976; is that correct?
A. I started in 1976 with Philip Morris.
MR. HEIM: I don't know if it will be helpful or not, but you requested a CV or resume. Here is one for you.
MR. EDELL: Thank you.
Q. Do you have any educational background with respect to the composition, the chemical composition of cigarette smoke?

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A. No. I do not.

Q. Do you know the chemical composition of any of the brands, of the smoke from any of the brands of cigarettes ever manufactured by Philip Morris?

A. Would you ask that again, please?

Q. Do you know the chemical composition of the smoke produced by any of the brands ever manufactured, brands of cigarettes, ever manufactured by Philip Morris?

A. No. I do not.

Q. When I say "the composition" I mean the chemical composition. You understand that?

A. I assume you are talking about the entire chemical composition of the smoke.

Q. In your certification or affidavit, we'll see what it is, it looks like a certification, it is an affidavit, you talk about tar yields, correct?

A. Yes.

Q. What is tar?

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A. The way I would define tar would be the smoke condensate as collected in a standardized methodology, sometimes referred to as the FTC method. This smoke condensate is collected on a, what is called a Cambridge pad. Tar would be everything, all the smoke condensate collected on that pad that is not water and nicotine.

Q. The smoke condensate is the particulate matter produced from the smoke from cigarettes?

A. It is the smoke condensate.

Q. What is condensate?

A. It is the material from the cigarette smoke that is collected on that pad that won't pass through that pad.

Q. What is the composition of the tar, the chemical composition?

A. I don't know the chemical composition of the tar. I can say that that composition would not include nicotine as a result of the way tar is defined.

Q. You do not know the chemical composition

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of tar produced in these smoking machines, that you referred to in your affidavit, correct, other than the fact that there is no nicotine in it.

A. I don't think I can sit here and list all of the entire chemical composition.

Q. Do you know what the chemical composition is, though?

A. No. I don't know what it is.

Q. That's the question. You said you can't list the chemical composition. That suggests to me that you know something about the chemical composition of the tar. Maybe you don't know all the constituents; is that correct?

A. I do not know all the constituents.

Q. Do you know any of them?

A. I have seen listings of those, although none of those components are coming to mind as we sit here.

Q. Good. It will make for a shorter deposition.

MR. HEIM: I'm going to hold you to

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that.

Q. You don't have any first-hand knowledge, you never did any analysis yourself to determine what the chemical composition of the tar was; is that correct?

A. That's correct.

Q. When was the first time you had any responsibility for the design of any brand of cigarette manufactured by Philip Morris?

A. I think that would depend on how you or someone would go about defining designing our products.

Q. I'm trying to pick up on the language that you used in your affidavit. You indicate that in February of 1988, you were responsible for the redesign of existing cigarettes, so I guess what we are going to do is we'll use "design" in the context of what you meant to convey in your affidavit. What did you mean to convey in terms of designing your affidavit?

A. Can I have a copy of my affidavit?

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Q. Sure.
A. So I can refer to it.
Q. It has been previously marked by us as PDX-102.
A. Okay. The question again was?
Q. You used the, on page two of your affidavit, you used the phrase "redesign"; is that correct, paragraph four?
A. Yes.
Q. So what did you mean to convey in the context of this affidavit in terms of the use of the word "design"?
A. Design from the standpoint of, in terms of redesign of existing cigarettes, I was referring to setting specifications for our existing brands, when there was some cause to adjust the design of the cigarette.
Q. You just said "when there was some need to adjust the design of the cigarette."
What do you mean by "design of the cigarette"?

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A. Design of the cigarette would be the characteristics of the cigarette, that we want the cigarette to conform to.

Q. What characteristics are you referring to?

A. Primarily taste. I think taste is the overarching characteristic that we design our products to.

Q. What other characteristics other than taste?

A. Tar delivery, as defined by the FTC or the TITL smoking methodology. There are other physical parameters, the circumference, the length, parameters like that that we want to ensure remain consistent.

Q. Circumference, length, what else?

A. Tobacco weight.

Q. Any other thing about the design of cigarettes that you intended to refer to when you used the word "design"?

A. Tobacco weight, filter, the overall

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design of the filter, again, its weight, its pressure drop or resistance to draw.

There are also some visual attributes of the product that are important, the color of the tipping paper, the quality of the print, and there is a variety of visual characteristics that are also important.

Q. Nicotine is not one of these components that you are concerned with; is that correct? You didn't mention nicotine in all of the "characteristics of cigarettes" that go into the design.

A. I think in our endeavor to ensure consistency of our existing products, nicotine would be one of those things that we pay attention to.

Q. Does that mean it is one of the characteristics of cigarette design or one of the components of the cigarette design?

A. It is a characteristic of the design.

Q. Let's get back to the original

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question. When was it that you first had responsibility for any aspect of the design of any cigarettes manufactured by Philip Morris?

A. I would say in terms of the responsibility for the design.

Q. Any aspect of the design?

MR. HEIM: Let him finish.

MR. EDELL: I want to make sure he understands the question.

A. I think in terms of responsibility, sometimes that is a tough question to answer, in that many, many people weigh in in terms of the responsibility for these things. I have participated, and we can talk about my participation, probably throughout my career participating in the design of our products.

Q. In 1976, in what way did you participate in the design of products manufactured by Philip Morris?

A. By studying performance characteristics of materials we manufacture in our manufacturing

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facilities and providing that data to be utilized in the design of our products.

Q. Is this quality, determine the quality assurance?

A. Certainly quality would be a consideration in that, yes.

Q. What was the main thrust of your efforts? Was it quality assurance?

A. Yes. I think quality assurance would certainly be a key factor in that, from the standpoint of ensuring the consistency of what we produce, and then the cost-effectiveness of what we produce.

Q. When you came to Philip Morris in 1976, did they provide you with any information with respect to the various characteristics of the different brands that were manufactured by them at the time?

A. I was certainly exposed to the various characteristics of our brands in 1976, yes.

Q. Were you given a book, here is the

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design? How was that information conveyed to you?

A. In the particular department I worked in, we maintained and issued to the factories various aspects of the specifications, the manufacturing specifications for our products, so I was privy to those characteristics that we communicated to the plants.

Q. What form did you receive these various specifications? Somebody said to you --

A. I'm sorry, go ahead.

Q. Somebody said to you, "here are the specifications"? Or was it written or documented or kept somewhere?

A. Yes. These specifications were submitted to paper, and they were kept in large notebooks, large binders.

Q. So if we wanted to know the specifications for any particular brand at any particular time, Philip Morris has that information; is that correct?

A. I would assume so, yes.

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Q. Were you privy to the additives that were part of the characteristics of the brands of cigarettes manufactured by Philip Morris?

A. What do you mean by "additives"?

Q. Well, in addition to tobacco, was anything else included in the cigarette?

A. Yes. We applied flavors to our products.

Q. You wouldn't describe those as additives?

A. They can be described as additives. I would describe them as flavors.

Q. Was anything else added, other than flavors, to the cigarettes?

A. Are we talking about at this time?

Q. At that time.

MR. HEIM: Just to be clear, we're talking about what he was privy to in 1976?

Q. I am trying to figure out what he was privy to. He said the specifications for all the cigarettes; is that correct?

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A. For all of the cigarettes that we manufactured in the U.S., yes.

Q. So that means you were privy to the list of all the agents that may have been added to the cigarettes; is that correct?

A. No. I was not privy to our flavor formulas at that time.

Q. In other words, when you say "specifications for the cigarettes", you don't include the flavor additives; is that correct?

A. You asked me the component or the piece of those that I was privy to, and so the flavors are not a part of what I was privy to.

Q. Maybe it was the way I interpreted your response. I asked you whether or not you were privy to any of the design aspects of cigarettes. You said, yes, manufactured by Philip Morris, you said, yes, in 1976, I was aware of the specifications for all the cigarettes manufactured by Philip Morris in the U.S., correct?

A. We'll have to go back and see what I

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said. I think that is probably, generally correct.

Q. And then we started discussing additives, and I was wrong on the phrase, you were more familiar with the context of flavors, right? Flavors; is that right?

A. Yes.

Q. I asked you what were the flavors, and you said you weren't really privy to that information in 1976, correct?

A. Correct.

Q. So the flavors weren't part of the specifications for the cigarettes in 1976?

A. The flavors were not part of the specifications that I was able to see at that point in time.

Q. So you weren't privy to the specifications for all aspects of cigarettes manufactured by Philip Morris in the United States; is that correct?

A. I don't think I said I was privy to all aspects of the specifications. If I did say that,

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what my inference was was that I was privy to the piece of the specifications for all our products, but not all of the specifications. Maybe we're in sort of a semantics thing here.

Q. I don't know what's inside your head. I'm trying to get it out.

A. I want to be clear what I am saying.

Q. So when you said you were privy to specifications for cigarettes manufactured by Philip Morris in 1976, you are telling us that you are only privy to some aspects of those specifications, correct?

A. That's correct.

Q. Not all aspects?

A. That's correct.

Q. When is it that you came privy to all aspects of any of the cigarettes manufactured by Philip Morris in the U.S.?

MR. HEIM: Objection to the form.

MR. EDELL: What's wrong with the form?

MR. HEIM: That assumes he was ever

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privy to it.

MR. EDELL: That's fine. If you weren't, please tell me.

A. I don't believe that I have ever been privy to all aspects of all our specifications.

Q. So you don't know, for example, what all the specifications are for any brand ever manufactured by Philip Morris, correct?

A. In what I would consider to be all, the answer is no.

Q. When we say "specifications" we mean the parts that make up the whole of the cigarette, correct?

A. That's correct.

Q. You are missing certain information with regard to certain parts of the composition of the cigarettes, correct?

A. That's correct.

Q. And you have no firsthand knowledge with respect to the composition of cigarettes manufactured before you got there, correct?

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A. Well, I think I have some knowledge of cigarettes that Philip Morris manufactured before I came to work, yes.

Q. From what you read, correct?

A. Yes.

Q. Not from something that you actually saw? In other words --

A. Reading is seeing to me.

Q. You're right. Stupid question. Something you actually observed, other than the writings of others, with regard to the specifications of cigarettes manufactured prior to 1976?

A. You mean did I see us manufacturing cigarettes prior to 1976?

Q. Yes.

A. No. I don't believe I was ever in a cigarette factory before that.

Q. Let me go at it this way. How did you become aware of the specifications for cigarettes manufactured by Philip Morris prior to 1976?

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A. In the course of my work, it was important at times to look at it, from a historical perspective, how things were done and managed and whatever, and in those cases where I needed benefit of that kind of information, I would, you know, seek it out and sometimes find it and sometimes not.

Q. How would you endeavor to find out this information?

A. Well, we would keep, to some extent, historical files of our specifications, for example, or the specifications that I referred to earlier having been accessible to me.

So one of the things I would, you know, go seek out at times is what some of the prior or some of the historical specifications indicated.

Q. You gleaned these from documents maintained at Philip Morris?

A. Yes.

Q. Did you ever rely upon information conveyed to you by others orally, with respect to

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the design of any of these cigarettes?

A. I would rely on what I felt to be credible, yes.

Q. Who would you discuss the design of cigarettes with?

A. In 1976? I mean --

Q. I wasn't there. So I don't know.

A. I mean certainly I would have spoken to the people I worked for, people I worked with, and people I felt like had some sort of knowledge associated with whatever question I might be pursuing.

Q. What is your understanding as to why you prepared this affidavit?

A. I'm not sure I have a good understanding of it, other than I was requested to put this together.

Q. Tell me what the request was.

MR. HEIM: Wait a minute. Time out. I am not going to let him obviously talk about communications that he had with his lawyers, I'm

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just going to instruct him not to answer those questions.

If he can answer what he thought his understanding of why he was putting the affidavit together without doing that, that's fine. If he can't, I will not permit him to answer the question.

MR. EDELL: Okay.

Q. How is it you came to prepare this affidavit? It wasn't like you were sitting in your office one day and said, jeez, I got to prepare an affidavit. Some event occurred that precipitated your preparing an affidavit, correct?

A. Right.

Q. What was that event?

A. I was asked by legal counsel to participate in preparing this.

Q. You didn't prepare this document, the affidavit that's in front of you, what is it marked? Can you turn the first page? 102?

MR. HEIM: Object to the form. You can

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answer.

A. I'm not sure what you mean by I didn't prepare this. I think these are my words. I didn't physically commit them to paper.

Q. They are your words?

A. Yes.

Q. Did you dictate this to someone?

A. In an iterative process of getting here, yes.

Q. Tell us the process?

A. I was interviewed. My thoughts from that interview were committed to paper, I reviewed those thoughts that were prepared and, you know, going around a few times got it in the form that it currently exists.

Q. Now, you don't have any understanding as to what issues you were attempting to address in preparing this affidavit; is that correct?

A. I'm not an attorney, and I just don't feel like I'm an expert on how to answer that at all.

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Q. I'm not asking you whether you are an expert. There was a state of mind that you had at the time that you were participating in the process of preparing this affidavit.

A. Yes.

Q. That state of mind, I assume, included some understanding as to why you were doing what you were doing, whether it was right, wrong or not. You had some state of mind, did you not?

MR. HEIM: Object to the form of the question.

MR. EDELL: Sir?

A. I had an understanding.

Q. What was your understanding as to why you were going through this process?

MR. HEIM: Object on the grounds he already answered the question.

MR. EDELL: He said he is not an expert on legal issues.

MR. HEIM: So what are you asking him?

MR. EDELL: I didn't ask him what the

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issues were.

MR. HEIM: I think you did actually, but regardless.

MR. EDELL: You are not directing him not to answer the question?

MR. HEIM: No. I'm just saying he has already answered the question.

A. So the question is?

Q. I don't remember. Mr. Myracle I am trying to find out what your understanding was as to why you were participating in the process of preparing this affidavit?

A. I think we have been sued in a civil action, and as a part of our response to that, I was requested to prepare this piece.

Q. The various different design characteristics of the cigarettes affect the composition of the smoke that is produced when the cigarettes are used by consumers, correct?

A. They certainly affect the quantity of the smoke.

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Q. It doesn't affect the components of the smoke?

A. I think there are some components that could be affected.

Q. What components?

A. Carbon monoxide, for example.

Q. In what way would the design characteristics of the cigarette affect the carbon monoxide that is produced when a smoker smokes a cigarette?

A. Simply put, adding, increasing the amount of filter ventilation, for example, would reduce the amount of carbon monoxide as measured by our, the standardized methodology of the FTC or the TITL method.

Q. Is it your understanding that the various design aspects that we discussed previously in the cigarettes manufactured by Philip Morris affect the quantity of the various components of the cigarette smoke received by a smoker when they smoke a Philip Morris cigarette?

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MR. HEIM: Object to the form. It mischaracterizes his testimony.

Q. Is that correct?

(The record was read by the reporter.)

A. I'm not sure I can take that question in all at one time.

Q. Do you have an understanding as to whether or not the composition of the smoke produced by any of the cigarettes manufactured by Philip Morris differs from the smoke produced by any other brand of cigarette manufactured by Philip Morris?

A. Your question was do I have any knowledge of it?

Q. Yes.

A. The only knowledge I would have is as a result of these brands tasting different, I suspect the composition would be somewhat different.

Q. That's your lay opinion?

A. It is my opinion, if you want to make it a lay or whatever, I'm --

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Q. I don't know whether or not you have done any studies or received any training with respect to the flavor aspect of cigarettes --

A. I have -- sorry. Go ahead.

Q. -- and what the burning of whatever these additives are or flavorings results in.

A. I will attempt to repeat myself. I have smoked virtually all of Philip Morris' brands and I have smoked numerous brands of other manufacturers all around the world, and for the most part all of these brands have a different taste. I surmise from that that the smoke must be different, if I get a different taste.

Q. Is that the only basis for your testimony that there is a difference in the smoke produced by any of the brands manufactured by Philip Morris?

A. I think from a quantitative aspect the fact that some measured parameters on these, on this world of cigarettes we are referring to, are different, that there must be some differences in

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the smoke, at least from a quantitative standpoint.

Q. Is the reason you are saying because there is a quantitative difference in the tar and nicotine yields?

A. Yes. If we are talking about tar yield to tar yield to tar yield on brands, there are differences.

Q. But you don't know whether or not there is any difference in the tar produced by any of the cigarettes, correct?

A. I do not. I don't know what that difference would be, if they are different.

Q. Am I correct that Philip Morris attempted to market or did market a denicotinized cigarette, a cigarette without nicotine?

A. We marketed what we referred to as a denicotinized cigarette.

Q. What was that brand?

A. A brand called Next, a brand called DNH De-Nic, as I recall. Those are the two brands that come to mind.

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Q. Were they successful?

A. I think that depends on how one measures success.

Q. Are they still in the market?

A. They are not any longer in the market.

Q. How long were they in the market?

A. I don't recall precisely. They were in test markets, and I don't recall the duration.

Q. What is your understanding as to when they were test marketed? Did you participate in that process at all?

A. I participated in the development of the De-Nic, what I am referring to as the De-Nic cigarettes, yes.

Q. And when did you participate in this process?

A. I became involved in the development process in 1988, when I returned to Richmond.

The project was under way at that point in time.

Q. Does it help you put a time frame as to

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when Philip Morris marketed these cigarettes, or test marketed these cigarettes?

A. Time frame is in the, you know, I don't know, I'm going to have to guess. The time frame, let's say, around 1990.

Q. Did you have an understanding as to why they were attempting to market a denicotinized cigarette, a cigarette without nicotine?

A. I don't think I can speak to all of the reasons the company decided to do so. I can speak to some of those reasons.

Q. Please, speak.

A. To what?

Q. To those reasons that you are aware of, as to why they marketed, Philip Morris marketed a cigarette without nicotine?

A. I think one of the reasons was that the technical capability to do it became available to us, the supercritical carbon dioxide extraction process, wherein we had the ability to remove the nicotine and we felt we could produce an acceptable

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tasting product with that technology.

Q. Is it your testimony that because the technology existed, that was the reason, your understanding as to the reason why Philip Morris manufactured a cigarette without nicotine?

MR. HEIM: Object to the form.

A. That's not what I said.

Q. What was your understanding as to why Philip Morris test marketed a cigarette without nicotine?

A. As I said, I don't believe I know all of the reasons why. I counted one of those reasons.

Q. I want to know any of the reasons.

A. Another reason is that the people running the company at the time gave us that as a task to go create that capability to introduce the brand, and we did so.

Q. So there were two reasons that you are aware of, one was there was technology available to produce such a cigarette, and, two, you received a directive from people in the company to do so,

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correct?

A. Yes.

Q. Were you aware of any other reasons why Philip Morris test marketed a cigarette without nicotine?

A. I believe that the company felt there was a business opportunity in terms of being in a position to market that product.

Q. What was that business opportunity?

A. That we could, that there may be a potential consumer demand for a product, a good tasting cigarette without nicotine and with that technology we could fulfill that market demand.

Q. Were you privy to any of the information that was produced from the test marketing of various cigarettes without nicotine?

A. I recall seeing some sales reports that monitored the ongoing sales of the product.

Q. Were you aware why Philip Morris did not market it on a nationwide basis? When I say "it" I mean any of the cigarettes they were test marketing

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that did not have nicotine.

A. I don't think I know why we did not market it nationwide.

Q. You don't have any understanding as to why?

A. No. I was not involved in those decisions, so I don't, I don't know.

Q. You have no understanding, that's what I am asking you. Whether or not you are right or wrong is not an issue.

Whether or not you had an understanding is the question, as to why they didn't market these cigarettes without nicotine on a broader basis.

A. One of the key issues we had with this cigarette was the fact that it did not taste good enough, so to speak, in terms of it appealing to consumers.

So I can only surmise that one of the key reasons we didn't introduce it nationally, is that we were unable to get the taste of it such that it was consumer acceptable.

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Q. Have you ever been privy to any of the research done by Philip Morris respecting why people continue to smoke?

A. You would have to show me the research, I guess, I'm not sure I know what you are referring to.

Q. Are you aware as to whether or not Philip Morris has ever done research into the issue of why people smoke?

A. Why people smoke, yes, we have.

Q. Have you been privy to that information?

A. Yes.

Q. What information have you been privy to?

A. I have been privy to some research that was done by some outside researchers, not employees of the company, that we contracted to attempt to answer various aspects of that.

Q. Who are they?

A. Probably an unanswerable question.

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Q. Who were they?
A. Who were they?
Q. The people that you contracted?
A. One was David Mustow.
Q. Where is he?
A. Where is he presently?
Q. Where was he at the time, where is he presently?
A. Where was he? At the time, he was at Yale University.
Q. Where is he now?
A. I have no idea.
Q. Any other outside consultants?
A. Yes. Gordon Mangon, Dr. Gordon Mangon.
Q. Where was he located?
A. He was located at the University of Auckland in New Zealand.
Q. Any other outside consultants? Make it easy. Give me the names of all the outside consultants that you are aware of that Philip Morris employed to look into the issue as to why

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people smoke?

A. We contracted with a man named David Harley. I don't recall his academic affiliation. He was, I think, in the Netherlands. I would have to refer to the documents to recall exactly the name of the university he was affiliated with.

Those are the four that, I think that's four, Mustow, Mangon, Harley. We spoke with a man named David Warburton on occasion on this subject, seeking his opinion.

Q. Where is he located?

A. I don't recall his university facility, but he was from England, I don't recall the university affiliation.

Q. Anybody else?

A. Those are the ones that I recall at this moment.

Q. Did you see any of the internal research conducted by Philip Morris on the issue of why people smoke?

MR. HEIM: Object to the form.

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A. I don't know what research we have done internally as to why people smoke.

Q. Do you know Dr. Dunn?

A. I have read about him in the newspaper. I have never met him that I know of.

Q. Have you ever seen any research he did?

A. Nothing other than what's been in the newspaper.

Q. Did you ever see any of the research done by any of the members of his group?

A. I'm not sure of his group.

Q. Dr. Ryan?

A. Doctor?

Q. Ryan.

A. What's the first name?

Q. I don't recall right now.

A. I know of some Dr. Ryan. I don't know if it is the one you are referring to.

Q. Do you know the names of any Dr. Ryans who did research at Philip Morris with respect to why people smoke?

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A. No. I don't.

Q. Did you ever see any of the research that Philip Morris did with respect to nicotine as a pharmacological agent?

A. The question was again?

Q. Did you ever see any of the research done at Philip Morris with respect to nicotine as a pharmacological agent?

A. I don't recall a paper or something like that, no.

Q. Paper or something, do you remember any research that was done by Philip Morris on that issue?

A. No. I don't.

Q. Do you know what a pharmacologic agent is?

A. I am not a chemist, and I, no, I can't, I can't offer.

Q. So you don't know what the pharmacologic agents in cigarette smoke are, correct?

A. No. I would leave that to the experts.

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Q. The answer is no, you don't know what they are.

MR. HEIM: I think he said no. He said he would leave it to the expert.

MR. EDELL: We have an answer.

MR. HEIM: I would like one question and then another question.

Q. Were you aware as to whether or not Philip Morris ever added nicotine to any of its products?

A. Added how?

Q. In any way.

A. Some of the materials we use in the manufacture of our products contain nicotine. I mean tobacco has nicotine, so that is added to our product, so I am not clear on --

Q. Why don't you tell us all the ways in which nicotine has been added to Philip Morris products that you are aware of.

A. Okay. It is certainly in tobacco if it hasn't been denicotinized. There is nicotine

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sulfate in what we refer to as SD-4 alcohol, which is ethanol with nicotine sulfate methylene blue added as denaturants, so that the alcohol is nonpotable, can't be consumed by people and that is added or used as a diluent in some of our flavor systems in very, very minute quantities. That is all that is coming to mind that I'm aware of.

Q. As far as you understand there are only two components of the design of cigarettes manufactured by Philip Morris, by which nicotine could be added to the product. One is the tobacco that is used and the other is the nicotine sulfate contained in this SD-4 alcohol; is that correct?

MR. HEIM: Object to the form.

A. To my understanding, those are the only two I can speak to with certainly, yes.

Q. Whenever you add those words, it sort of -- my antenna go up. You said that you could testify to with certainty. Do you have an understanding as to whether or not there may have been any other way that Philip Morris added

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nicotine to any of its products over the various years Philip Morris manufactured cigarettes?

A. I am here as a fact witness, and I guess I am not here to speculate on those things and I would be speculating.

Q. Now, you are being a lawyer, so just please answer the question.

A. I did.

Q. Well, tell me --

MR. HEIM: Let's not argue back and forth.

Q. We're not going to argue. I apologize, Mr. Myracle. What is your understanding as to other means by which Philip Morris added nicotine to any of its products, other than the two we just discussed. Whether or not you have any degree of certainty or not, I want to know what they are.

MR. HEIM: Object to the form.

(The record was read by the reporter.)

A. There are, I suppose, it is my understanding that there have been some flavor

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extracts in our formulas, flavor formulas, that may have contained nicotine in minute quantities at some point in time.

I don't know that for certainty.

Q. Where did you get that information?

A. Where did I get that information? I think I have seen some of that in the course of the ABC trial. I have seen some of it or heard some of it simply in the course of the, you know, my position in the company.

Q. What flavor extracts were you referring to by which Philip Morris added nicotine to its cigarettes?

A. I don't know the flavor extracts.

Q. Who would know at Philip Morris?

A. You are asking for a name, I presume.

Q. Yes, who?

A. Frank Daylor.

Q. Daylor?

A. D-a-y-l-o-r.

Q. What's his position with the company?

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A. I don't know his current position.
Q. What was his position the last time you knew his position?
A. Actually, he is a retired employee. He was a retired employee consulting with the company the last time I interacted with him.
Q. When was the last time you interacted with him?
A. I would say approximately a year.
Q. And where would this interaction take place?
A. You mean the last one I had or any of them?
Q. The last interaction that you had with Mr. Daylor?
A. I don't recall it specifically.
Q. Do you know where Mr. Daylor lives?
A. His address?
Q. Let's start with the state and then we can go to the city and then we can go to the street. What state does he live in?

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A. I believe in Virginia.
Q. What city does he live in?
A. I don't know where his residence is.
Q. If you were trying to find him, what would you do?
A. I would ask some people that I think would know where he might be.
Q. Who would they be?
A. They would be employees over at our Research & Development facility.
Q. What are their names?
A. I would probably ask David Williams first.
Q. What is his position last time you interacted with him?
A. Who is that?
Q. Mr. Williams.
A. What was his last position --
Q. What was his position the last time you interacted with him?
A. I don't know his title.

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Q. If we wanted to find out whether or not, in fact, Philip Morris ever added nicotine by any means other than through tobacco or this nicotine sulfate that was included in SD-4, how would we ascertain that?

A. Your question was "ever"?

Q. Yes.

A. I think you would have to look through all of our documents and talk to anybody that's ever been a part of our design and manufacturing of our products.

Q. So to your understanding, would there be a specification that would include that?

A. Include what?

Q. That information, whether or not any other source of nicotine was ever used in any of the Philip Morris products other than the two that we have been discussing?

You look puzzled. It is the way I asked the question obviously.

A. I'm not sure I followed the question. I

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apologize.

Q. It may be that my thinking is wrong, but I would think that if you had specifications for a product, somewhere the manufacturer would have all the specifications for the product; is that an erroneous assumption with respect to the cigarettes that are manufactured and have been manufactured by Philip Morris?

A. I don't think that is an erroneous assumption.

Q. So we could go to one source to see whether or not there were any other sources by which Philip Morris added nicotine to any of its products, we would go to those specifications, correct?

A. You continue to refer to one source. I don't think there is one source.

Q. All right. But if we wanted to, we could just look at the specifications, correct, and that would give us the information that we are looking for?

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A. I don't know if it would give you the information you are looking for. I guess you are implying that there is information there that may not be there. I don't know.

Q. Do you know whether Philip Morris maintains the specifications for all the cigarettes ever manufactured by it?

A. I don't know.

Q. Who would know that?

A. I don't know if anybody knows if we have ever maintained every specification for every cigarette we have ever manufactured.

I mean this company goes back, I don't know, one hundred years or so.

Q. Let's talk about the last twenty years.

A. Okay.

Q. Do you know whether or not Philip Morris maintains the specifications for all the cigarettes that it has manufactured in the last 20 years?

A. I would believe so.

Q. And where are those specifications?

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A. They are in various places in the company.

Q. Do you have a copy of all the specifications for all the cigarettes?

A. I do not.

Q. Is there a central repository where you can go to find those specifications?

A. Not where I can go to find them, no.

Q. Where somebody can go?

A. I am assuming the attorneys can go find them, because we have turned them all over, but I don't have access to all of them.

Q. It must be the way that I am phrasing the question, but there is no one source that you are aware of, where Philip Morris maintains the specifications for its products that it has manufactured over the last twenty years?

A. No. I don't believe so. We don't keep all of those specifications in one place.

Q. In other words, you couldn't go to a file and see what the design specifications have

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been for all the cigarettes manufactured by Phillip Morris; is that correct?

A. Not in one place.

MR. HEIM: Mark, let's take a short break when you are at a point it is convenient.

Q. So is it fair to say you don't know what the design specifications were for all the cigarettes that have been manufactured by Philip Morris, correct?

A. I'm sorry, ask that again.

Q. You don't know the design specifications for all the cigarettes manufactured by Philip Morris, for example, in the last twenty years?

A. I don't know all of the elements of all of our specifications manufactured over the last twenty years.

Q. Is there anybody at the company who knows more about the specifications of cigarettes manufactured by Philip Morris over the last twenty years than you do?

A. I don't know.

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MR. EDELL: Let's take a break.

(Break.)

Q. Is it fair to say that it is the smoke that is the most important aspect to a consumer of Philip Morris products?

A. I think the taste of the smoke would be the most important aspect.

Q. That is part of the smoke itself, correct?

A. The taste?

Q. Yes.

A. I think it is a characteristic from the smoke, yes.

Q. Is it fair to say that you can adjust various design aspects of a cigarette and get the same tar and nicotine yield?

MR. HEIM: Do you understand the question?

MR. EDELL: Obviously, he does not.

Q. You can have a variety of different designs and still produce the same tar and nicotine

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yield, correct?

A. Yes. I think that would be true.

Q. So the net effect is what the cigarette produces as opposed to what is in the cigarette, or the design of the cigarette?

MR. HEIM: Object to the form. Is that a question?

THE WITNESS: Yes.

Q. In terms of your affidavit, you listed the more exceptional difference or the striking difference between the various brands is the tar and nicotine yield, correct?

A. I listed that as a characteristic, yes.

Q. I thought it was the most striking difference?

A. Right.

Q. That is the end product that is produced by burning the cigarette, correct?

A. What is, the tar and nicotine?

Q. Yes.

A. That is what is measured.

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Q. In the smoke.
A. Yes.
Q. Not in the cigarette itself?
A. Right.
Q. So it is the smoke that counts and not so much the design of the cigarette, in terms of the differences that you enumerated in your affidavit.
MR. HEIM: Objection to form.
A. I think I have enumerated a number of differences in my affidavit.
Q. In preparation for this deposition today, did you review any materials?
A. Do you mean documents? Is that what you mean by materials?
Q. Whether you went to a Ouji board, anything.
MR. HEIM: Don't tell him about Ouji boards. Did you look at any documents?
A. I looked at my resume, which you have.
Q. All right.

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A. I looked as a Marlboro brand history.
Q. Is that one of the documents that you have produced or will be produced today?
MR. HEIM: Yes?
A. Yes. And the Tobacco Institute Laboratory Smoke Yield Report.
MR. HEIM: Do you want those, Marc?
MR. EDELL: You can give them to John at any time, so he can start looking at them.
Q. What is your understanding of the word "titration"?
A. I don't believe I have one.
Q. You never heard the word used before?
A. I seem to recall it from chemistry class.
Q. Have you seen any research into the differences in the way people smoke cigarettes?
A. I don't believe so.
Q. You are aware that Philip Morris did that research, correct?
A. And I should qualify that. I think I

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have seen some research that we have done on the position of one, of a smoker's lips, to the ventilation, to the filtered ventilation holes that we put on our filters.

Q. What kind of research was that?

A. It was research to determine the, you know, the sort of average positioning of a smoker's lips relative to those holes.

Q. Why was Philip Morris investigating this issue?

A. We wanted to ensure that we placed the positioning of those holes such that a smoker would not block them in the normal course of smoking.

Q. Why?

A. It would interfere with the performance of a cigarette, if the smoker blocked those holes with their lips.

Q. In what way would it interfere?

A. It would have, certainly, an adverse affect on the taste of the cigarette.

Q. Other than that research, are you aware

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of any other research conducted by Philip Morris investigating the issue of the different ways in which smokers smoke cigarettes?

A. I don't recall any others.

Q. Did you see any research that was done by Philip Morris investigating the difference in the way a low tar and nicotine smoker smoked as opposed to a full-flavored cigarette smoker?

A. I don't recall any research like that, or having reviewed any research like that.

Q. You don't know whether or not Philip Morris ever did that type of research?

A. I don't know. I don't recall that type of research.

Q. Do you know whether or not Philip Morris did any research to investigate whether or not the machines that have been used by the FTC reflect, in fact, the way people smoke cigarettes?

A. I am not aware of whether we have or have not.

Q. Does the manner in which somebody smokes

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a cigarette affect the tar and nicotine that they inhale?

A. I can only assume that that would be the case, but I don't know how much a smoker gets, you know, from a cigarette. I can't quantify it.

Q. You have never seen any research into that issue by Philip Morris, correct?

A. I don't recall ever having seen it.

Q. Theoretically though, one could, depending upon the difference in the manner in which one inhales, one can extract from two different cigarette designs the same amount of tar and nicotine, correct?

A. Two different designs, two different cigarettes?

Q. Two different cigarettes, two different designs of cigarettes?

A. I don't think you smoke a design.

Q. Cigarettes of different design, excuse me.

A. So the question is --

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Q. Let's make it more simple.
A. Okay.
Q. How would you define a full-flavor cigarette?
A. I would define it as one of between 12 and 16 milligrams tar.
Q. How would you define a low-tar cigarette?
A. From 9 to 12 milligrams tar.
Q. Depending upon how one would smoke a full-flavor cigarette as opposed to a low-tar cigarette, one could actually receive the same amount of tar and nicotine from smoking a particular cigarette, correct?
MR. HEIM: I'll object.
A. One could --
MR. HEIM: Excuse me. Excuse me. I'll object on the grounds that there is a lack of foundation for this testimony from this witness.
MR. EDELL: Sure.
MR. HEIM: You can answer now .

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A. I think the way in which those two cigarettes are smoked would have a big effect there. If I take one puff off of one and eight off of the other, I am going to get a different amount. I suppose we could go through a lot of arithmetic and find some way.

Q. But theoretically, depending upon how you smoked, you could receive the same amount of tar and nicotine from a low-tar cigarette and a full-flavored cigarette, correct?

MR. HEIM: Same objection.

A. I don't know.

Q. Does that make sense to you from a mechanical engineering perspective?

A. I suppose I tend to look at it the other way, from a mechanical engineering perspective, and that would be that it is unlikely that people do precisely the same thing the same way twice, so I think we are looking for a, you know, some sort of statistical aberration that they would get precisely the same amount in the situation you have

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described.

Q. But theoretically, it is possible, correct?

A. Theoretically, it is not possible as well.

Q. You mean it may occur, and it may not occur?

A. Right.

Q. Has Philip Morris made any attempts to measure the nicotine in smokers' blood, the nicotine level in the blood of people who smoke their products?

A. I don't know. I don't know if you can directly do that anyway. I'm not an expert in that.

Q. So you don't know whether or not there is a minimum amount of nicotine that smokers extract from cigarettes, whether or not they are low-tar or full-flavored, correct?

A. No. I don't. I don't know smokers extract nicotine, if that is what you are asking

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me.

Q. Maybe I'm using the wrong word. There is nicotine in cigarette smoke, correct?

A. Yes.

Q. All the products ever manufactured by Philip Morris and sold on a nationwide commercial basis contained nicotine?

A. Yes, in the smoke.

Q. In the smoke. Smoke is the most important component, correct?

MR. HEIM: Object to form. Important as to what?

MR. EDELL: As to what the smoker receives, the amount of nicotine they receive.

A. Let's do the question again, please.

Q. Other than the quantity is there a difference in the nicotine that is produced by the cigarettes manufactured by Philip Morris?

A. I don't know.

Q. Who would know that at Philip Morris?

A. I don't know that either.

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Q. Is it fair to say that the only thing you know about the smoke produced by Philip Morris cigarettes is that it differs in terms of tar and nicotine yields?

A. I don't believe I have said that, no.

Q. Do you know anything else about the smoke, other than that it differs between brand with respect to the tar yields and nicotine content?

MR. HEIM: Other than what he has already testified about?

MR. EDELL: No.

Q. Is there anything else you know about cigarettes, other than the amount of tar and nicotine differs from brand to brand?

A. I think earlier I talked about carbon monoxide, for example.

Q. Are there any cigarettes that have been manufactured by Philip Morris that have not produced carbon monoxide in their smoke?

A. That have not produced?

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Q. Have not.

A. Not to my knowledge.

Q. What else do you know about any differentiation between brands of cigarettes manufactured by Philip Morris, other than they may differ in tar yield, nicotine content and the amount of carbon monoxide?

A. I know that in our cigarettes with charcoal filters that we manufacture, there are differences between a charcoal cigarette and a noncharcoal cigarette in terms of what we refer to as gas phase smoke index.

Q. What's the difference in a charcoal filter cigarette in terms of the gas phase index versus a noncharcoal cigarette?

A. Typically the charcoal filtered cigarette has a higher gas phase smoke index.

Q. What is contained in the gas, what are the agents contained in the gas?

A. I don't remember precisely what the measure calls for today. I think it has changed

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over time.

Q. Is there a difference between the constituents in the gas phase of a charcoal filtered cigarette versus a nonfiltered cigarette?

A. I believe so.

Q. What is the difference?

A. The charcoaled filtered cigarettes would have a reduced quantity of some of those gas phase compounds that we have measured.

Q. Are there any constituents in the gas phase of a charcoal filter cigarette that are not found in a noncharcoal filter cigarette?

A. I don't know.

Q. Are you aware as to whether or not there are any cancer promoting agents in cigarette smoke?

A. I don't consider myself to be knowledgeable enough to know the answer to that.

Q. Do you have an understanding as to whether or not, from your 20 years with Philip Morris, whether there are any cancer-producing

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agents in cigarette smoke?

A. I certainly don't know for sure.

Q. Do you have an understanding as to whether or not there are, not whether you are 100 percent certain, but what is your state of mind with respect to that issue?

MR. HEIM: Objection. He already answered the question.

MR. EDELL: I don't think he did.

A. When I say I have come to an understanding, that means I have a degree of certainty, and I don't have a degree of certainty about whether there are cancer-causing agents in smoke.

Q. You are aware that there have been identified cancer-promoting agents in cigarette smoke, correct?

A. I'm aware that some scientists have offered up their point of view on that.

Q. What are those cancer-promoting agents that these scientists have identified?

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A. I don't recall any sitting here right now.

Q. You don't recall any?

MR. HEIM: He just said he doesn't recall any.

MR. EDELL: When I asked him the question, he said now, and he was going to identify one of those?

A. I recall reading recently about benzopyrene.

Q. What do you recall reading about benzopyrene?

A. Not much.

Q. It is your recollection that that has been identified as a cancer-producing agent in cigarette smoke?

A. No. It is my recollection that I read about that in the newspaper as being alleged to be cancer-causing. I don't know whether it is or not.

Q. Are you aware of any cancer-promoting agents found in cigarette smoke?

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A. No. I'm not.

Q. Are you aware of any harmful agents in cigarette smoke, harmful to human beings?

A. Will you define "harmful"?

Q. It can hurt our biological systems.

MR. HEIM: The question is without regard to quantity, just constituent elements?

MR. EDELL: Sure. We can try that first.

A. Again, I'm not an expert on what is harmful or not harmful, I can only sort of operate off of the same information we have all had, you know, the benefit of from the press and doctors and every surgeon general and everyone else.

I think that carbon monoxide in great enough quantity is harmful. I'm aware of that.

Q. Are you aware of any research done by Philip Morris into the harmful effects of carbon monoxide?

A. No. I'm not.

Q. Have you seen any of the internal

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research performed at Philip Morris with respect to the physiological effects of cigarette smoke?

A. I have seen some work with respect to things called evoked potential responses which I would classify as a physiological response.

Q. Could you read that back? What was that?

A. Evoked potential, nasal evoked potential is a correct way to say it.

Q. Any other research that you have seen that has been performed by Philip Morris regarding the physiological effects of cigarette smoke?

A. I earlier talked about some of the external research that we contracted.

Q. No. Internal research.

A. Internal, no.

Q. Are you familiar with any work that has been performed by Philip Morris with respect to adding various catalysts to the composition of cigarette design?

MR. HEIM: Could we have the question

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read back?

MR. EDELL: I'll rephrase it.

Q. Are you aware of any work performed by Philip Morris with respect to adding different catalysts to the design of cigarettes to affect the cigarette smoke?

A. Yes.

Q. What work are you aware of?

A. I am aware of some work to try to invent a catalyst that would be specific to reduce -- a catalyst that would be added to a filter, if it could be made, that would reduce carbon monoxide.

Q. Was that product ever developed by Philip Morris?

A. Not to what I would consider to be developed, no.

Q. What do you mean?

A. That it would be commercially viable.

Q. Why was it not commercially viable?

A. My understanding would be or is that we were never able to -- that whoever was working on

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this thing was never able to make a stable catalyst and, you know, to that end, find a means of that catalyst staying just in the filter and doing its job.

Q. So you mean it would be inhaled by a smoker, if they smoked it?

A. That was a potential concern, yes.

Q. Any other research that you are aware of that was performed by Philip Morris with respect to catalysts?

A. That's the only one I can recall.

Q. Did it, in fact, reduce the carbon monoxide?

A. I don't know. I don't have a specific recollection of the data from that work.

Q. Have you seen any of the research performed by Philip Morris with respect to the constituents of cigarette smoke?

MR. HEIM: I think that was asked this morning, but go ahead.

MR. EDELL: I don't think so. I may

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have.

A. I'm not sure what you mean by the "research" part of that. I have seen listings of the various chemicals or the various constituents of cigarette smoke that have been measured from time to time.

Q. What is your understanding as to why they were measuring these constituents, why Philip Morris was measuring these constituents?

MR. HEIM: Objection as to form.

Q. It was Philip Morris that was measuring the constituents, correct?

A. Yes.

Q. What was your understanding as to why they were doing this?

A. I think the constituents have been looked at over time to understand the taste characteristics of cigarettes based upon what's in the smoke.

Q. Is it your understanding it had nothing to do with smoking and health?

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A. What I just referred to was not related to smoking and health that I am aware of.

Q. Right. Is it your understanding that the research performed by Philip Morris respecting the constituents of cigarette smoke had nothing to do with smoking and health?

MR. HEIM: I thought he just answered that.

(The record was read by the reporter.)

A. I'm not aware of any research that we have done on the constituents of smoke and the effects on smokers.

Q. You don't know whether or not Philip Morris has ever done such research, correct?

A. No. I'm not.

Q. Was there ever an attempt by Philip Morris to develop a product that would reduce polycyclic hydrocarbons?

A. I don't know.

Q. Do you have an understanding as to what polycyclic hydrocarbons are?

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A. No. I'm not a chemist.
Q. You have no understanding what they are?
A. No.
Q. Do you know whether or not Philip Morris ever attempted to develop a medically acceptable cigarette?
MR. HEIM: Objection as to form.
MR. EDELL: What's wrong with the form?
MR. HEIM: I don't know what you mean by a "medically acceptable cigarette"?
MR. EDELL: You can answer.
A. Again, I don't know what would constitute a medically acceptable cigarette.
MR. HEIM: Marc, I am not going to direct him not to answer any of these questions, even though I fail to see what they have to do with class certification.
As I understand it, this is supposed to be a class certification deposition and not a merits deposition. My position ultimately will be that if it turns into a merits deposition, that is

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what it is in this case.

MR. EDELL: I'm not sure I understand that. Are you suggesting that I would be foreclosed from asking any further questions?

MR. HEIM: I'm suggesting -- no. Let me rephrase that. I am telling you that that is what my position will be, if it turns out to be in my judgment, a merits deposition, and not a class certification deposition as the court has ordered in the case management order.

MR. EDELL: I'm not sure I understand what your position is. Can you articulate it again please for me?

MR. HEIM: I'm beginning to feel like I'm in this deposition now. What I am saying is simply this:

As I understand it, this deposition is being taken pursuant to a case management order that distinguishes between depositions for class certification purposes and merits depositions. You and I may not be on the same page as to what is or

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is not a class certification as opposed to a merits deposition, and that happens all the time.

But if we get to a point where I think it has degenerated into plainly a merits deposition, I'm going to tell you that, and tell you it is my position that you now taking your merits deposition.

MR. EDELL: Fine. Now I understand.

Q. Do you know whether or not there was ever any research performed by Philip Morris to determine whether or not there were any products that it manufactured that did not contain carcinogenic agents in their cigarette smoke?

A. I'm not aware of that research, if it were done.

Q. Have you ever worked with the marketing department at Philip Morris?

A. Yes.

Q. Have there ever been any discussions with respect to marketing a cigarette from a health perspective?

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A. That I have been involved?
Q. Yes.
A. No. I don't think so.
Q. Was there any discussion that you were aware of or any documents that you have seen that suggested that the reason for developing a cigarette without nicotine was in order to avoid the cardiovascular effects of nicotine on smokers?
A. I am certainly not aware of that.
Q. Are you aware that, in fact, there is a, an effect on the cardiovascular system of people who smoke cigarettes?
MR. HEIM: Objection to form.
Q. I'm sorry. Are you aware that nicotine does have an effect on the cardiovascular system of cigarette smokers?
A. I'm certainly not an expert in that. I guess I have read things to that extent.
Q. Who is Dr. Osdene?
A. Dr. Osdene is a former employee of Philip Morris.

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Q. The last time you interacted with him, what position did he hold at Philip Morris?

MR. HEIM: I'm tempted to object to the sarcasm, but I will withdraw the objection. What position did he hold?

A. I don't recall what his title was the last time I interacted with him.

Q. What was your understanding as to what his responsibilities were?

A. I think that Dr. Osdene has had various responsibilities over the --

Q. I was going to start with interacting and work my way back.

What is your understanding of the various responsibilities that Dr. Osdene has had?

A. At one point, I believe I'm correct in saying he was the Director of Research in the Research & Development Department. That is the only title of his that I recall.

Q. Who is Dr. Wakeham?

A. Dr. Wakeham is the former head of R&D,

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Research & Development.

Q. Were you aware of work that they were having performed by Dr. Burger at the University of Virginia?

A. No.

Q. Have you ever received any information from Philip Morris with respect to the issue of cigarette smoking and health?

A. Ask that again.

Q. I changed gears. Have you ever received any information from Philip Morris with respect to the issue of cigarette smoking and health?

A. Not that I recall.

Q. So in the 20 years that you have been working there, you never received any information from your employer with respect to cigarette smoking and health, that you can recall?

A. That is an awfully broad question. I suppose I have read the warning notices that we placed on our packs that certainly have some notations about smoking and health.

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Q. Anything else?

A. Those are the ones that come to mind sitting here right now.

Q. Have there ever been any attempts by Philip Morris to enhance the effect of nicotine?

A. Effects on? I'm not sure I understand the question.

Q. Enhance the effect of nicotine in their products?

A. I don't know how to answer that.

Q. What don't you understand about the question?

A. Enhance the effects of nicotine on?

Q. Who are they selling their product to?

MR. HEIM: Wait a minute. Wait a minute.

MR. EDELL: Philip Morris, who do they sell their products to?

MR. HEIM: If he doesn't understand the question, why don't you just rephrase the question?

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MR. EDELL: Sure.

Q. Who is the consumer of Philip Morris products?

A. Obviously people that buy our products.

Q. Human beings?

A. Yes.

Q. And you are not concerned with monkeys or rats or any other species, correct?

A. I don't believe they buy our products.

Q. In terms of consumers?

A. Correct.

Q. Has there ever been an attempt to enhance the effect of nicotine on consumers of Philip Morris products?

A. Not that I am aware of.

Q. Have there been any attempts to enhance the effect of nicotine on any other biological system?

MR. HEIM: Object to that question. I really don't understand that.

MR. EDELL: I didn't understand his

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response before. I don't understand why --

MR. HEIM: His response was a fair response. I know you thought he was quibbling with you. But he's thinking of it in terms of the manufacturing process, and you are thinking of it in terms of the effect on human beings, and I can understand -- that's the difficulty.

MR. EDELL: Fine. That's fine.

Q. Are you aware of any work done by Philip Morris to enhance the effect of nicotine in the manufacturing process?

A. Maybe it is terminology I'm struggling with again. I don't know how nicotine sort of in a sense affects our manufacturing process.

Q. I only asked that question, because your counsel said you may be thinking about it in those terms?

A. Certainly from the standpoint of developing a denicotinized cigarette, for example, we would be interested in how to make the nicotine in that process as extractable as possible.

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Q. What does that have to do with enhancing the effect of nicotine?

A. To me, I'm trying to understand your question, in terms of enhancing the effect in our manufacturing process. I would like to affect nicotine in such a way that it can be extracted in the process as we designed the process.

Q. Does the design of the cigarettes manufactured by Philip Morris have anything to do with the effect of nicotine on consumers?

A. I don't know.

Q. Who would know that?

A. I don't know.

MR. HEIM: Could I have that question back?

(The record was read by the reporter.)

Q. Is there anything that can be done with respect to the design of cigarettes that would enhance the effect of nicotine on consumers?

A. I don't think I can answer that, because I am not, I certainly don't consider myself to be

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knowledgeable about what the specific effects of nicotine are on a smoker and then how would I go about enhancing those effects. I'm not sure anybody knows.

Q. You can't answer that question?

A. I cannot answer that question.

Q. When you were being prepared for this -- you were prepared for this deposition by counsel; is that correct?

A. Yes.

Q. Did counsel discuss with you questions that you might anticipate being asked during the course of this deposition?

MR. HEIM: I'll let you answer yes or no to that question.

A. Yes.

Q. Was there any discussion with respect to the questions that were asked of Dr. Jones?

MR. HEIM: Don't answer that question. I instruct him not to answer the question.

Q. Do you know who Dr. Jones is?

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A. No.
Q. Stephen Thomas Jones?
A. I don't believe so.
Q. You have not seen his certification or affidavit in this case?
A. Have I seen his? I have not looked at it, no.
Q. To the best of your recollection, it wasn't discussed with you; is that correct?
MR. HEIM: Don't answer the question. Nice try though.
THE WITNESS: Is this a good time for a break?
MR. EDELL: Fine with me.
(Break.)
Q. Are you familiar with any -- back up. Did you ever hear of nitrosamines?
A. I have heard that term.
Q. In what context?
A. In the context of bacon and other sort of cooked foods having nitrosamines.

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Q. Nothing to do with cigarettes?

A. I have heard of tobacco-specific nitrosamines.

Q. What have you heard about tobacco-specific nitrosamines?

A. Not much that I would really understand or I understand at all. I could not sit here and tell you what I have heard about them.

Q. Not what you understand, but what you have heard?

A. I have heard the term. Beyond the term there is not much I could tell you.

Q. Were you aware of research being performed for Philip Morris investigating the issue of nitrosamine inhibition in cigarette smoke?

MR. HEIM: I'm going to do what I told you I would do, and that is that we are in merits discover, which is a good part of what we were doing this morning, and we are well beyond the bounds of class certification discovery.

MR. EDELL: All right.

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Q. Let me ask this question: You are an expert on the design of cigarettes, correct?

MR. HEIM: Objection. We have told you that he is not. You can answer.

A. I don't know what would constitute an expert on cigarette design.

Q. Do you know whether or not there are nitrosamines produced by cigarettes?

A. I don't know. I am not a chemist. I don't, I just can't address that.

Q. You have not seen any documents, Philip Morris documents that have identified nitrosamines in cigarette smoke; is that correct?

A. I don't recall any.

Q. Have you seen reports in the lay press that, anywhere between 300 and 400,000 people a year die from cigarette-related diseases?

A. I think I have seen numbers to that effect.

Q. Have you ever investigated whether there is anything in cigarette smoke that does, in fact,

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kill 400,000 people a year?

A. I have never investigated that.

Q. Have you ever been interested in that?

A. Yes. I have been interested in it.

Q. Have you gone to anybody in the company to ask them whether or not we are selling a product that kills 400,000 people a year?

MR. HEIM: Object. We're into argument now, questions.

MR. EDELL: It goes to his credibility.

MR. HEIM: It is well beyond as I said before class certification discovery. It is plainly merits and even with merits, it is argument.

MR. EDELL: Are you directing him not to answer?

(The record was read by the reporter.)

A. No. I have not done that.

Q. Have you ever asked anybody in the company whether or not there is any constituent of cigarette smoke that, in fact, causes cancer?

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A. I don't believe I have asked that question.

Q. Have you asked whether or not there is any constituent of cigarette smoke that might cause cancer?

A. I don't recall having asked that question.

Q. And you have never investigated the possibility of designing a cigarette for Philip Morris that might not cause cancer in human beings, correct?

A. I don't think anybody knows specifically what causes cancer in human beings. I don't know how I would go about doing that.

Q. Have you ever attempted to investigate that issue?

A. What causes cancer in human beings?

Q. Designing a cigarette to eliminate whatever it is that might cause cancer in human beings?

MR. HEIM: Objection. Just arguing with

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the witness here.

MR. EDELL: I'm not arguing with him.

MR. HEIM: Sure you are. He just said he doesn't know what causes cancer. How would he design something if he doesn't know what causes it?

Q. You are aware of agents in cigarette smoke that have been identified as potential causes of cancer in human beings, is that correct?

A. I have read things from time to time in that regard.

Q. The answer is yes?

MR. HEIM: The answer is what he said it was.

Q. Is the answer yes?

A. I have read things from time to time that have alleged to be carcinogens.

Q. Have you ever discussed with anyone at Philip Morris the elimination of any of those constituents that have been identified as a potential cause of cancer in human beings?

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A. I don't recall having done that.

Q. Have you ever seen any literature that identifies cigarette smoke as a contributor to the development of heart disease?

A. Recently, it seems like there is something about that every day in the paper.

Q. Have you participated in any discussions at Philip Morris with respect to the development of a cigarette that would eliminate that in cigarette smoke that contributes to the development of heart disease?

MR. HEIM: Continuing objection, so I don't have to object after each question.

MR. EDELL: You have an objection except for the form of the question. It is preserved.

A. The question is?

(The record was read by the reporter.)

A. I don't believe I have, because I don't believe anybody knows specifically what's in cigarette smoke that contributes to heart disease. I didn't know how we can have that conversation.

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Q. Are you aware of any components of cigarette smoke that have been identified as a potential cause of heart disease in human beings?

A. Would you read the question again?

(The record was read by the reporter.)

A. I don't think I am qualified to answer that.

Q. Can you still answer it?

A. I don't know.

Q. You don't know whether or not you have seen any literature that has identified components of cigarette smoke that might cause heart disease in human beings?

A. I have probably seen some literature, I don't recall what it says.

Q. Have you participated in any discussions at Philip Morris with respect to design of Philip Morris products that would reduce or eliminate the potential causes of heart disease in the cigarette smoke?

A. I don't think so. I don't think that we

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nave a position on what is in cigarette smoke that causes heart disease.

Q. What do you mean "you have a position" on the issue?

A. It would seem to me that one would have to know what, if anything, is in cigarette smoke that causes heart disease to try to modify it in some way.

Q. What research are you aware of that Philip Morris has conducted to investigate that issue?

A. I'm not aware of any.

Q. I'll show you a document marked as PDX-010.

Who is O. P. McComas?

A. I don't know.

MR. HEIM: Take a moment and look at the document.

Q. I'm referring you to the names that appear in the left-hand corner. You see that?

A. Yes. I do.

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Q. The first is C. P. McComas, you are not familiar with that?

A. That name, no, I'm not.

Q. J. F. Coleman, III, are you familiar with that name?

A. Joe Coleman was a former chairman of Philip Morris Company.

Q. George Weisman, are you familiar with George Weisman at Philip Morris?

A. Yes. He was a former chairman of the company.

Q. Are you familiar with a W. H. Hatcher?

A. No.

Q. A gentleman by the name of R. M. DuPuis, how do you pronounce that?

A. I don't know.

MR. HEIM: D-U-P-U-I-S.

MR. EDELL: How do you pronounce that?

MR. HEIM: I haven't a clue.

MR. EDELL: He was in charge of Research & Development at Philip Morris at one time.

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MR. HEIM: I gather the correct answer for the question you haven't heard yet is that anything we mark in this deposition we'll treat as under this protective order that the judge has entered in this case. We'll treat the documents the same way we're treating the testimony.

MR. EDELL: We will treat the exhibits to this deposition in the same manner as we are treating the testimony. Whether or not the documents themselves may be used in another set of circumstances is another issue.

MR. HEIM: I think that's right. For purposes of this case at this deposition, we will treat them just as you said.

Q. Were you aware that in 1956, the head of Research & Development told these various individuals, McComas, Coleman, Weisman and Hatcher, that decreased carbon monoxide and nicotine are related to decreased harm to the circulatory system as a result of smoking?

A. I was two years old at the time. I have

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no idea.

Q. Your affidavit though attests to the design of cigarettes manufactured when you were two years old, correct?

A. In some regards, yes.

Q. Were you aware in 1956 the head of Research & Development was telling these various individuals, which included the chairman and CEO of Philip Morris that decreased irritation is desirable not only from the subjective viewpoint but also as a partial elimination of a potential cancer hazard?

A. First of all, I haven't read this, I don't know what it says, and I don't know what these people's positions were at the time.

MR. HEIM: Take a minute and read the document.

THE WITNESS: Okay.

Q. Are you still on the first paragraph?

A. Second page. This is difficult to read.

Q. I'm sure you can get a better copy.

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MR. EDELL: Do have you a better copy, counsel?

MR. HEIM: I'm sure the copy you hand me is better than the one you handed to the witness.

MR. EDELL: Good. Thank you.

MR. HEIM: You're welcome.

THE WITNESS: Okay.

MR. HEIM: Is there a question pending?

MR. EDELL: I don't think so.

Q. You have read the document?

A. Yes.

Q. I will show you exhibit, Plaintiff's Exhibit 0108. It is a document entitled a Five-Year Research & Development Program, Philip Morris, Incorporated, dated February, 1957.

You see that on the front page?

A. Yes. I do.

Q. It has the name C. V. Mace, ever heard of that individual?

A. No.

Q. I will ask you to turn to page, well,

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there are two page ones. Maybe they are all marked page one.

It is the second page of the document where the text is. You see where it says "research objectives", "research accomplishments" after that?

A. Yes.

Q. You see paragraph five under "research accomplishments", it says: "Initiating studies of smoke composition, establishing chemically the relationship of smoking to health, and developing analytical techniques that will provide for the improvement of filters and the development of constructed smoke."

Do you see that?

A. I read that along with you, yes.

Q. We have established that you haven't been shown any of the studies performed by Philip Morris regarding the composition of smoke; is that correct?

A. I think I mentioned some awareness of

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composition of smoke earlier.

Q. Are you aware of any studies that related to establishing chemically the relationship between the smoke and health?

A. I am not, no.

Q. What is your understanding as the phrase "constructed smoke"?

MR. HEIM: Can you tell us where you are referring to, Marc?

MR. EDELL: Sure, the last two words of paragraph five?

A. I have no idea what that means. That is not a term of art that I'm familiar with.

Q. You have not seen that document previously?

A. No. I certainly don't recall.

Q. Have you had interaction with Research & Development at Philip Morris?

A. I have worked in that department, yes.

Q. When did you work in Research & Development?

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A. From 1988 until 19 -- the end of 1995. Yes.

Q. What work did you perform in Research & Development during those seven years?

A. I was the head of the Product Development Division during that time.

Q. And what was your interaction with research?

A. Sort of as needed. My interaction would have to do with obtaining the resources of various expertise where required on some of the projects we were working on.

Q. What do you mean by obtaining resources?

A. People, budget money, that sort of thing.

Q. Did any of your interaction have to do with smoking and health?

A. No.

Q. Did any of your interaction with research relate to smoking and physiological and/or psychological dependence?

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A. I think in some -- the only place that would apply would be in some of the external research I mentioned previously.

Q. I remember there were consultants that had to do with the physiological dependence; is that correct or psychological dependence?

A. I'm not sure that is the way you asked the question a minute ago.

(The record was read by the reporter.)

A. No, not from the standpoint of physiological dependence.

Q. Psychological?

A. Or psychological dependence.

Q. Did it relate in any way to the effect of nicotine on smokers?

A. I would think about it in terms of the effects of smoking on smokers. I don't think it is -- I can't separate between nicotine and smoking. I mean nicotine is a constituent in the smoke, and I don't think we have ever done research, per se, on nicotine itself on people.

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Q. Have you done research on nicotine on animals?

A. Not that -- I have not.

Q. Philip Morris, I mean.

A. I don't know.

Q. You seem to qualify your last response by saying Philip Morris has never done any research on the effect of nicotine on humans, correct?

A. Not that I am aware of.

Q. Have they ever done research on the effect of nicotine on any other biological system?

A. I don't know.

Q. Were you familiar with a Nicotine Program at Philip Morris?

A. What does that mean exactly?

Q. It is not my phrase. Let me get the document.

I'm going to show you what is marked as PDX-0212. What is the title of that document?

A. Well, the apparent title on this page is "The Nicotine Program."

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Q. You are not familiar with a Nicotine Program at Philip Morris; is that correct?

A. I would have to -- I don't think so, no.

Q. Were you ever advised by anyone at Philip Morris that "nicotine is a powerful pharmacologic agent with multiple sites of action and it is the most important component of cigarette smoke"?

A. I don't recall that opinion, no.

Q. You see where it says: "Nicotine and an understanding of its properties are important to the continued well-being of our cigarette business since this alkaloid has been cited often as the 'reason for smoking' and theories have been advanced for 'nicotine titration' by the smoker."

A. I see that here.

Q. You are not familiar with that research?

A. I don't even know if this is research. This appears to be somebody's opinion or something.

Q. You have not seen this document before?

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A. No. I don't believe so.
Q. If you wanted to find out whether the company ever did any research into the issue of nicotine and its affects on human beings, where would you go in the company? Who would you speak with?
A. I would probably go to our central files at Research & Development and ask them to do a search on that subject.
Q. Is it on computer?
A. To be honest, I don't know exactly how they have their documents inventoried.
Q. You worked there seven years and you don't know how the documents are inventoried?
A. Actually, I have never been down to see how the documents are inventoried.
Q. So the answer is you don't know, correct?
MR. HEIM: He already said he doesn't know.
MR. EDELL: I'm not so sure.

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A. I'm not sure how they are inventoried. I suspect it has changed over time, just like technology has changed.

Q. What leads to you that suspicion?

A. Most everything has gone from library card categories to I can go to the public library now and computer access something now akin to a library card.

Q. I'm talking about Philip Morris. Has there been a change in the way --

A. As I said, I don't know.

Q. The documents that you deal with on a day-to-day basis, they are not part of a database; is that correct?

A. Documents --

Q. Specifics, if you wanted to find out the specification of a cigarette, you wouldn't have a way of doing a search through a computer; is that correct?

A. We have some specification information in computer databases.

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Q. Going back to what year?

A. I don't know.

Q. Who would know?

A. I believe the people that would be responsible for those databases.

Q. Who are the people who are responsible for those databases?

A. David Williams is responsible for the flavor database, although I don't know if it, I don't know the extent of that information. I have never seen the database.

I know in my current department, I would go to some people that worked for me for some specific aspects of our manufacturing specifications. I would go to the current Product Development Department for the, for their piece of, you know, the cigarette design specifications. I would go to the leaf department for the leaf blend specifications.

Q. Take a look at the last paragraph on page one of the document entitled "the nicotine."

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For these reasons our ability to ascertain the structural features of the nicotine molecule which are responsible for its various pharmacologic properties can lead to the design of compounds with enhanced desirable properties (central nervous system effects) and minimize suspect properties (peripheral nervous system effects)"? Do you see that?

A. Yes.

Q. Have you ever seen the results of that research?

MR. HEIM: Object to the form of the question. It assumes that there was research.

A. Yeah, I don't know if this research was ever done.

Q. You don't know what research was or was not done in the Nicotine Program, correct?

A. No. I do not. I don't know that there was a Nicotine Program.

Q. I will represent to you that this document was produced by Philip Morris as coming

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from the Philip Morris files.

A. Uh-huh.

Q. Do you have any reason to believe there wasn't a Nicotine Program?

A. I don't have any reason to believe anything one way or the other. This could have been simply a proposal for a program.

Q. My question is: Do you have any reason to believe that there was not a Nicotine Program?

MR. HEIM: Objection. He answered the question.

A. I don't have a reason to or to not believe that there was a Nicotine Program.

Q. We have established that it was Thomas Osdene, right, that's his first name who worked in Research & Development?

A. Yes.

Q. Who is E. V. Sanders?

A. I would assume that would refer to Dr. Ted Sanders.

Q. Is he still with Philip Morris?

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A. To my knowledge, yes.
Q. What positions has he held with Philip Morris?
A. The last position I'm aware of was as a principal scientist.
Q. Are you familiar with a C. J. Levy?
A. Yes.
Q. Who is C. J. Levy?
A. I believe that refers to Dr. Carolyn Levy.
Q. Is it Ms. Levy, Dr. Levy?
A. Dr. Levy.
Q. Is it a she or a he?
A. She.
Q. Is he still with Philip Morris?
A. Yes.
Q. In what capacity?
A. Senior vice-president, I believe, of marketing and sales information, I believe is her title.
Q. A J. I. Seiman?

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A. I believe that would refer to Dr. Jeffrey Seiman.

Q. What's his position with Philip Morris?

A. I don't know his position.

Q. Do you know what department of the company he was with?

A. Was with or is with?

Q. Do you have any information whether he is involved in sales, marketing, research, any area?

A. My knowledge of Jeff was his involvement at Research & Development.

Q. What aspect of Research & Development was he involved?

A. I guess from what I recall during my stay at R&D, he was responsible for planning. I certainly recall his involvement in our planning process.

Q. When you say "our planning process", what do you mean?

A. R&D is an organization that had a plan

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we put together that was an ongoing plan for our business unit.

Q. And were you familiar with the, was it one of these five-year plans, one-year plan, what was it?

A. It was both of those.

Q. Have you seen the various five-year plans put together by Philip Morris, Research & Development?

A. I have seen the ones that were put together while I was at R&D.

MR. HEIM: I want to say a couple of things. One is that at a convenient time I would like to break for lunch, whenever you finish what you are doing here.

The other thing I want to say is I don't think there is any effort made here to make this a class certification deposition. We are wandering in just wide ranging discovery, that seems to me to have nothing to do with the class certification issues here. Maybe that's okay with you, maybe

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that's your intention, but certainly I don't see any effort to try to keep this within the court's order.

MR. EDELL: Just so you understand, a lot of this last area of questioning has to do with nicotine and our position is that nicotine is nicotine, regardless of whether you have a filter with a circumference of X or Y and whether or not you use burly versus reconstituted, whatever, it is the nicotine in the smoke that some of these documents at least have admitted that is the basic pharmacologic agent in cigarette smoking and that's what makes the difference.

MR. HEIM: I recognize that's your position. If that is your position, I don't know why we are sitting here for hours asking questions about things that have nothing to do with that. If your position is that the information he provided in the course of his affidavit is germane to class certification, I would think that would be the subject matter, at least materially, of this

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deposition. It seems to me we are wandering all over the lot and reading documents from 1956 and there is no effort to comply with the court's order that this discovery be phased.

MR. EDELL: I certainly think that these documents relate to the design of cigarettes manufactured or investigated by Philip Morris. I don't know whether or not they were actually marketed and he apparently doesn't know. He doesn't even know whether they did research, but he is being offered by Philip Morris as someone who is going to testify as to the differences in design insofar as they affect the issue of class certification.

MR. HEIM: He is being offered by Philip Morris on the design aspects of cigarettes as set forth in his affidavit. Many of these questions or many of these areas have nothing to do with that. We're just not going to agree on this. I just didn't know whether it is your view that you are taking a class certification deposition or doing

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something else.

MR. EDELL: It is my view that I am conducting the deposition within the confines of class certification issues, but I think it is much broader than whether or not we are using tipping material that differs in one cigarette versus another cigarette. We have a different perspective of what may be relevant and not relevant on the class certification issue.

I don't think it makes a hill of beans difference as to whether or not there is a range of five milligrams to seven milligrams versus seven milligrams to nine milligrams, because I think your internal research shows it doesn't make a difference in any event, because they compensate for the amount of tar and nicotine found in various brands.

MR. HEIM: As I said before, if that is your view, you can characterize whatever you think the internal research says in the way that you want to characterize it, but I don't know that that

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should be justification for taking this deposition into areas that just are not the subject matter of the deposition.

MR. EDELL: We can debate this off the record and save ourselves a little bit of money.

MR. HEIM: Let's do that. You want to stop for lunch?

MR. EDELL: Yes. You said one o'clock and it is after one o'clock.

(Lunch.)

Q. I'm going to show you a document marked PDX-0116.

Do you know who W. H. Hatcher is?

A. No. I don't.

Q. Did we discuss R. R. Millhiser previously?

A. I don't believe so.

Q. Do you know who it is?

A. Ross Milheiser is who I assume that is.

Q. What positions did he have with the company?

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A. I believe at one point he was vice-chairman.

Q. Do you know who A. C. Britton is?

A. I assume that would refer to Andrew Britton.

Q. What position did he have at Philip Morris?

A. I don't know his titles. He was the head of manufacturing for some period of time.

Q. Who is R. B. Seligman?

A. I think that is Dr. Robert Seligman. He was head of R&D.

Q. Did you work with Dr. Seligman?

A. I worked with him. I have had associations with him.

Q. During the seven years that you were working in Research & Development, did you have any contact with Dr. Seligman?

A. I may have seen him at a stockholders meeting.

Q. J. E. Lincoln, is that Jack Lincoln?

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A. I assume that is who that refers to.

Q. What position did he have with the company?

A. I don't know.

Q. I will direct your attention to the fourth paragraph. You see where it says: "In addition to general reduction in numbers, the addition or subtraction of specific ingredients may have specific advantages with regard to product performance and advertising. The Marketing Department would be extremely interested in a cigarette which made a substantial reduction in polycyclic hydrocarbons."

Was there ever an attempt to develop such a product?

A. I don't know.

Q. You told us earlier that the technology for nicotine removal was available in the 1980's, and that was one of the reasons Philip Morris developed a non-nicotine cigarette at that time?

A. I want to be clear what I said. The

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technology that we used became available to us in the late eighties, that being the supercritical fluid extraction process. There are other means of extracting nicotine, but they extract more than nicotine and have other problems.

Q. I will show you a document marked PDX-0120. Who is Dr. Bavely?

A. I don't know.

Q. R. H. Blackmore?

A. I don't know.

Q. Did you ever hear of project 0100?

A. This refers to objective for 1964. No. I don't.

Q. Are you familiar with the fact that the "major object of the Research Division for 1964 is to develop a medically acceptable cigarette"?

A. Does it say that?

Q. Yes. It does.

MR. HEIM: It would be helpful here if you would direct the witness to --

Q. Sure. Second paragraph, first page,

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Dr. Bavely prefaced the meeting with the statement that: "The major object of the Research Division for 1964 is to develop a 'medically acceptable' cigarette in light of the present health attitude."

Do you see that?

A. Yes.

Q. Are you aware of that?

A. I was aware of that, yes.

Q. Were you aware that that was the major object of the Research Division in 1964?

A. I don't know who or what Research Division is being referenced here. I don't know if this is even a Philip Morris document.

Q. I believe it is a Philip Morris document, from the designation. You see the cc.'s, one goes to Dr. Wakeham?

A. Yes.

Q. Are you familiar a Dr. Baxt?

A. No. I'm not.

Q. Dr. Deszyck, is it?

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A. No. I am not.

Q. Were you aware that they were able to remove nicotine in 1963 from cigarettes?

A. Does this say that?

Q. Yes. I believe it says that.

A. I haven't read this document before.

MR. HEIM: Take a moment and read it.

Q. I don't know what the correlation is whether the document says it or not. I asked you were you aware in 1963 whether Philip Morris had the technology to remove nicotine from cigarettes?

MR. HEIM: Object to that question.

A. I couldn't put a year on it.

Q. Take a look at the numbered paragraph on the first page of Exhibit 0120. You see where it says one, nicotine removal. Accomplished.

A. I see that.

Q. Does that refresh your memory?

A. As I said, I don't know in what year we had this particular technology that this is referring to. I don't believe the supercritical

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fluid extraction capability was available in 1963.

Q. Under paragraph two, it says "removal of phenols."

A. It is not plural.

Q. Phenol. It says accomplished. Do you know what phenols are?

A. No.

Q. Do you know whether they have been identified in cigarette smoke?

A. I believe so.

Q. Do you know whether they have been identified as potential hazards for human beings?

A. I was not.

Q. Were you aware that Philip Morris had developed a technology to remove phenols in 1963?

MR. HEIM: Objection to form.

A. I don't know whether we developed that technology or not.

Q. You had access to the design specifications for cigarettes, correct? You are talking about the design aspects of cigarettes that

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go back to the sixties, are you not?

A. Are you referring to my affidavit?

Q. Sure.

A. Okay.

Q. Were you given documents to review in the context of your affidavit?

A. I think I told you the documents I reviewed.

Q. Had you ever become aware that Philip Morris had been able to design a filter that would remove phenols?

A. I don't know whether Philip Morris has actually designed one or not. I don't know whether that invention was ascribed to us or not.

Q. Is there such a filter?

A. I think there are additives that can reduce phenols, certain triacetines used as plasticizers can have an effect on phenol delivery.

Q. You see under paragraph three, polynuclear hydrocarbons removal?

A. Yes. I see that.

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Q. Are you familiar we discussed before whether or not polynuclear hydrocarbons are in cigarette smoke?

A. I don't know.

Q. You don't know whether they have been identified in cigarette smoke?

A. No.

Q. Do you know whether polynuclear hydrocarbons have been identified as harmful to human beings?

A. I don't know what a polynuclear hydrocarbon is.

Q. Number four says: "Nitrosamines removal"?

A. Right. I see that.

Q. Do you know whether or not Philip Morris developed a technique to remove nitrosamines?

A. I do not know.

Q. I will show you a document marked as PDX-0121.

It is from an R. D. Carpenter. Are you

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familiar with an R. D. Carpenter?

A. I recall meeting someone named Bob Carpenter somewhere in my career.

Q. At Philip Morris?

A. Yes.

Q. Was he employed by Philip Morris?

A. Yes.

Q. In what capacity?

A. Bob worked in the Research Department, I think, evaluating the chemical composition of our material and manufacture and things that came in contact with tobacco.

Q. Were you aware that he was working on the development of a "health cigarette"?

A. No. I don't.

Q. It says: "Critical parameters for a new cigarette. The development of a new cigarette by the end of 1964 which will meet requirements considered essential to a "health cigarette" poses several problems which must be considered." Did I read that correctly?

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A. You read it the same way I did.

Q. It doesn't refresh your memory that he was working on that?

A. No. I'm not aware of what this is referring to. I'm not sure it says that anything was developing, if that is what you are saying.

Q. But you weren't aware that, in fact, they were working on it, let alone developing one, right?

A. I don't know that this says they were working on one, or that work was done on one.

Q. Do you see where they are talking about under filter capabilities, it says: "Efficient gas phase filtration coupled with efficient "TPM" efficiency must be obtained. Compounds which should be greatly reduced if not eliminated are HCN, acrolein, formaldehyde, formic acid, crotonaldehyde, NO_2, methylvinyl ketone.

Are you familiar with any of those substances?

A. I have heard these chemical names, yes.

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Q. Do you have any idea as to why those compounds, why Philip Morris felt in 1964 that those compounds should be reduced if not eliminated?

MR. HEIM: Objection to the form.

A. I have no idea what the intention was here.

Q. You were aware that, in fact, Philip Morris had developed a safer cigarette, is that correct?

A. I don't know what constitutes a safer cigarette.

Q. Do you know what a hazardous cigarette is?

A. I don't know what a safe or a hazardous cigarette is.

Q. Do you know whether there are any hazards attendant to smoking?

MR. HEIM: Objection. We covered in this morning.

A. I'm sorry. You said attendant.

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Q. Do you know whether there are any hazards attendant to smoking?

A. There certainly has been a lot of literature on that, publications on that subject.

Q. But you don't know whether there are or are not any hazards?

A. I don't feel qualified to answer that.

Q. Were you aware that Philip Morris in 1964 had developed a physiologically outstanding cigarette but decided not to disclose the physiological story which might have appealed to health conscious segments of the cigarette market?

MR. HEIM: Objection as to form.

MR. EDELL: What's wrong with the form?

MR. HEIM: I didn't understand it for one thing. For another, it seemed to me you were reading from something, I couldn't tell what you reading from, so I didn't know whether it was in context or not.

Q. Do you know whether or not Philip Morris ever developed a cigarette that physiologically was

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better than the other cigarettes that they manufactured?

A. I don't know what that means, and I don't know whether we did or did not.

Q. Did Philip Morris ever attempt to design cigarettes to address health concerns?

A. Yes.

Q. When did they first attempt to design cigarettes to address health concerns?

A. I think when health concerns were first expressed by, you know, in readers digest in the mid fifties and other places, suggesting filters were better or lower tar deliveries were better, we manufactured cigarettes that had filters and had lower tar deliveries, for example.

Q. Any other efforts by Philip Morris to address health concerns, other than the one you just identified?

A. We have looked at products that heat tobacco rather than combusting tobacco, in an attempt to provide a satisfactory taste. That's

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one that comes to mind.

Q. Talking about health concerns. Are they synonymous, taste and health concerns in your thinking?

A. I don't think I said that.

MR. HEIM: I think you misunderstood him.

(The record was read by the reporter.)

Q. Does that have anything to do with health concerns?

A. I think that in terms of producing a cigarette that does not combust tobacco, it could potentially address many of those things that are alleged to have deleterious health effects.

Q. In what way?

A. In that they would produce less of those materials.

Q. Less of what materials?

A. Less carbon monoxide, for example.

Q. Anything else?

A. Less of any material that comes from

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combustion and that this doesn't -- and that heating tobacco would not form combustion products.

Q. What are the potentially harmful components of burning tobacco products?

A. I don't think I am qualified to answer that.

Q. But you know they would be eliminated or reduced by this process, correct?

A. That would be the objective, yes.

Q. Did Philip Morris ever develop the technology to eliminate or reduce these potentially hazardous substances?

MR. HEIM: Objection. Is this related to the last question?

MR. EDELL: Yes.

MR. HEIM: I gather the question is have they developed this technology to which he was just referring?

MR. EDELL: Yes.

THE WITNESS: Let's do it again, so I am clear.

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MR. HEIM: The question really, you have talked about a technology that heats rather than burns, right?

THE WITNESS: Yes.

MR. HEIM: The question is: Has Philip Morris developed that technology?

A. We have developed some technologies associated with heating tobacco to generate, to make a smoke aerosol relative to combusting tobacco to make a smoke aerosol.

Q. Thereby reducing the potentially harmful components of cigarette smoke?

A. In some cases, yes.

Q. In other cases no?

A. Well, you asked me had we developed the technology to heat tobacco, and that is what I answered.

Q. To eliminate these potentially harmful substances?

A. I don't believe that was the sole intention. That's one of the things that happens,

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if you don't burn or combust tobacco, some of those materials are not formed.

Q. If you don't have to light a cigarette, obviously, you don't have any of those harmful materials; is that correct?

A. Not in smoke, that's right. You would have to light.

Q. Did Philip Morris ever employ any of this technology that heats, rather than burns, the tobacco, thereby eliminating potentially hazardous substances?

A. Employ it where?

Q. In a marketed product.

A. No.

Q. Why?

MR. HEIM: Let's stop for a minute here. Marc, I think in order to answer that question and maybe any others related to it, the witness would or is likely to disclose highly confidential information, and if you want to pursue this, I would like counsel for, who are present for

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any company other than Philip Morris, to not be in the room.

MR. EDELL: I have no problem with that.

MR. HEIM: I apologize to counsel. (All counsel not representing plaintiffs or Philip Morris left the room.)

MR. HEIM: At this point, I will designate the questions that you are likely to ask on this subject as highly confidential, and we will, of course, as we had agreed to do at the beginning of this deposition, very promptly go back and go through this to make sure that we are not designating more than we have to designate, but to be careful about this, it is better to proceed this way.

(The record was read by the reporter.)

A. We don't have the technical capability today, I think, to produce such a product commercially.

MR. OTERO: If that's the end of the

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testimony on that subject, we can invite other counsel come back in, it could have led to highly confidential material.

MR. EDELL: As to why you didn't market it?

MR. HEIM: We didn't know entirely what the witness knows, and we didn't know what his answer might be. As a result, we had to be careful.

(All counsel present.)

(Discussion off the record.)

Q. Were you familiar with a By-Product Utilization Division within Research & Development?

A. That doesn't ring a bell, no.

Q. Were you familiar with a Cigarette Development Division, within Research & Development?

A. You would have to give me more specific information on it.

Q. I will show you a document marked as

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PDX-0124, it is a memorandum from Dr. Seligman to Dr. Wakeham regarding 1966 divisional plans and objectives.

You see on the first page where it notes By-product Utilization Division, do you see that?

A. Yes.

Q. Do you know what that is referring to?

A. I would have to read this to be able to comment.

Q. On page two there is a "Cigarette Development Division." Do you have any knowledge of what that references?

A. No. I don't. I am assuming if there is R&D there was probably a Cigarette Development Division.

Q. Page three there is a reference to a Chemical Research Division?

A. Yes.

Q. Are you familiar with that?

A. Not what it was in 1966, no.

Q. Are you familiar with what it was at any

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point in time?

A. We have had, during my tenure at R&D, we had a Chemical Research Division, as I recall.

Q. What was the responsibility of the Chemical Research Division?

A. I don't recall.

Q. Take a look at page four under the heading Chemical Research Division in this document. Do you read where it says: "Smoke chemistry control"?

A. Yes. I see that.

Q. It refers to the project involving the study of precursors involving certain smoke constituents considered to be of prime physiological concern, including polynuclears, HCN, CO, aldehydes, acids, phenols and nitrogen oxides and their derivatives.

A. I see your reference here, yes.

Q. Was that the kind of research being conducted while you were in Research & Development?

A. I don't recall us having a study of the

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precursors of whatever this is talking about. I don't know what the specific paragraph is referring to.

Q. What kinds of studies did the Chemical Research Division do when you were associated with Research & Development?

A. I think the Chemical Research Division was looking, one of the things, if I recall correctly, that they assisted us with was with the De-Nic process, for example, in terms of what we could treat the tobacco with to make the process as efficient as possible for removing nicotine, for example.

Q. Anything else that they were doing?

A. That is essentially all I recall, if I am recalling correctly.

Q. Take a look at page six. Who is R. E. Antell?

A. I don't know.

Q. Who is H. B. Merrit?

A. I'm assuming it refers to Henry

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Merritt.

Q. I don't know, I didn't author the document, Dr. Seligman did.

A. Excuse me.

Q. Dr. Seligman authored the document, all I can see is the cc.'s and who it refers to.

MR. HEIM: When he is asking you who a person is, he is asking you if you can tell him what the title was or the department was or some way of identification?

A. Okay.

Q. You didn't understand that to be the question.

A. I thought you were asking who the name was. I did not understand that to be your question. I apologize.

Q. So we are with --

MR. HEIM: So the question is can: You tell him who H. B. Merrit is?

Q. Does the name H. B. Merritt mean anything to you?

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A. I believe that's Henry Merritt. The question is who. Henry was in the Process Development Division, and he retired a few years back.

Q. Does the name F. E. Resnik mean anything to you?

A. Yes.

Q. Who is he?

A. Frank Resnick was at one point president of the Philip Morris Company.

Q. J. Staley?

A. I don't know who that is.

Q. Name is not familiar to you?

A. No.

Q. R. N. Thompson?

A. I believe that would refer to Dick Thompson. Dick Thompson was in the Product Development Department for some period of time. He passed away sometime ago.

Q. We talked earlier about a Dr. Burger at the University of Virginia. There is a reference

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in this document we marked as PDX-0128, which is a memo from Dr. Osdene to Dr. Wakeham to Dr. Burger. Does this refresh your recollection as to what work Dr. Burger was doing for Philip Morris?

A. I have no knowledge of Dr. Burger.

Q. Do you see in the second to the last paragraph where it says:

"Since I feel that the line of research taken by Dr. Burger is of direct interest to us (the object is to find a nicotine substitute which will not have the cardiovascular effects of nicotine), and he is most willing for us to benefit from his research, I recommend we support the fellowship for a further year."

A. I see that.

Q. Do you have any idea what the cardiovascular effects are that Dr. Osdene is referring to?

A. No.

Q. Did you ever discuss that with him?

A. No.

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Q. You didn't understand that to be part of the reason they were trying to develop a cigarette without nicotine?

A. No.

Q. I also asked you earlier about the question of titration. Do you remember that?

A. I remember you asking me if I knew that term.

Q. I will show you a document marked as PDX-0150. It is entitled Tar and Nicotine in Cigarette Consumption and appears to be authored by T. R. Schori. Does that name mean anything to you?

A. No. It does not.

Q. W. L. Dunn, Jr., does that name mean anything to you?

A. If that is the same as Dick Dunn, who has been highly publicized, that is what that would mean to me.

Q. You see where it says, in the second paragraph: "Cigarette consumption rate i.e. number of cigarettes smoked per day, was found to vary as

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a function of the nicotine delivery of these cigarettes.

"Specifically, as nicotine increased, cigarette consumption rate decreased. This finding supports the notion that smokers develop a daily nicotine intake quota and when smoking cigarettes differing in nicotine than that to which they are accustomed, they tend to modify their consumption rate in order to maintain their normal quota."

Do you see that?

A. Yes. I read that.

Q. Do you remember before I asked you whether or not Philip Morris had done research into that issue, does this refresh your memory?

A. I have never seen this before. This does not refresh my memory.

Q. The tar and nicotine numbers that are referenced in your affidavit, are they the numbers, do those numbers represent the daily intake of tar and nicotine by cigarette smokers?

A. I don't think so, no.

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Q. What do they represent?

A. They represent numbers determined by a standardized methodology known as the FTC or Tobacco Institute Testing Laboratory methodology.

Q. How long has that methodology been used?

A. I don't know when that methodology was actually officially adopted by the government.

Q. Is it something that has been recently developed?

A. No. It was probably in the mid seventies, I guess. I don't recall for sure.

Q. Well, what methodology are you referring to when you reference cigarettes manufactured by Philip Morris prior to 1970, for identifying tar and nicotine levels?

A. It is my understanding that Philip Morris sort of led the development of that particular smoking methodology back in the mid fifties. It was officially adopted by the government as a means of making those determinations, as I said, somewhere in the mid

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seventies, but I don't know the exact date.

Q. Was there ever an attempt by Philip Morris to determine whether or not those figures are representative of the amount of tar and nicotine actually received by smokers?

A. I don't know.

Q. I show you a document marked as PDX-0174.

This is apparently a letter from Dr. Wakeham to Dr. Max Hausermann. Are you familiar with that name, Max Hausermann?

A. I am familiar with that name.

Q. Who is Dr. Hausermann?

A. Dr. Hausermann at one point was the head of Research & Development in Philip Morris U.S.A. I didn't know his exact job while in Europe, but he was associated with Philip Morris in Europe.

Q. Was there a Research & Development facility in Europe?

A. Yes. There has been.

Q. And what were the responsibilities?

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A. I'm not sure I can speak to the entire responsibilities over all time. I would be glad to answer some specific questions.

Q. What are you aware of?

A. They have a Product Development Department essentially similar to what we would have here in the U.S. for developing cigarette products for sale in Europe.

Q. I will direct your attention to paragraph two, Dr. Wakeham is telling Dr. Hausermann the following:

Of particular interest is the work on "human smoking habits." We have come to similar conclusions which are startling only because we (and others) have assumed that the standard smoke test conditions are indicative of the way people smoke. Test conditions were based on very sketchy information for nonfilter smokers and were arbitrarily chosen because we did not have time to get better information. Now, some U.S. manufacturers are advertising FTC tar and nicotine

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numbers on the packs. There is concern that if in the light of new findings we are too strong in our denunciation of the current test as being unrealistic, some advocates might claim the advertising numbers are false and misleading. Others might claim we should revise the test procedure to some new, arbitrary and more complex standard. I am not suggesting we defer the research or neglect to apply it to our product problems. We should by all means use it to our best advantage. On the other hand, I would propose deferring publication or presentation to committees or conferences, particularly those attended by our competitors, for obvious reasons."

Do you see that, sir?

A. Yes. I do.

Q. Does this refresh your recollection that Philip Morris had determined that the tests employed by the FTC to measure tar and nicotine bore little resemblance to the tar and nicotine received by smokers?

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MR. HEIM: Objection to the form.

(The record was read by the reporter.)

A. I am not sure I understand the question, Marc, I'm sorry.

Q. Were you aware that Philip Morris had done research in order to determine whether or not the FTC numbers that -- I'm sorry.

Were you aware that Philip Morris had conducted research in order to evaluate whether or not the numbers for tar and nicotine on packs of cigarettes were, in fact, representative of the amount of tar and nicotine that people would receive when they smoked cigarettes?

A. I don't know whether we have done that research or not.

Q. This does not refresh your recollection?

A. No. I don't think this necessarily says --

MR. HEIM: The question is whether it refreshes your recollection. The answer to that is either yes or no.

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A. No. It does not refresh my recollection.

Q. What do you think this document is referencing?

A. It appears to reference a June Research Progress Report.

Q. Do you see where it says: "We have come to similar conclusions which are startling only because we and others have assumed that the standard smoke test conditions are indicative of the way people smoke"? "We do not believe" refers to Philip Morris?

A. I don't know what Dr. Wakeham meant when he wrote this.

Q. You are not aware of any research that was performed by Philip Morris to determine whether the smoke, the standard smoke test conditions are indicative of the way people smoke?

A. I am not. I certainly don't recall any sitting here today.

Q. So you don't know whether or not the

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numbers that are reflected in your affidavit accurately reflect the amount of tar and nicotine received by people when they smoke a particular brand, correct?

A. I don't think they were intended to do that.

Q. What was the intent of the tests?

A. To be able to provide a relative comparison of tar and nicotine yields of various brands to one another under a controlled set of smoking conditions.

Q. It was unrelated to the tar and nicotine that might be obtained by an individual smoker, correct?

MR. HEIM: When you say "it" the affidavit?

MR. EDELL: The numbers reflected in the affidavit. The tests.

A. Are unrelated to --

Q. What a smoker would be receiving in terms of tar and nicotine?

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A. I don't think they are unrelated.
Q. In what way are they related?
A. The machine takes a puff of a cigarette and measures the particulate matter in the smoke. I think that people take puffs off of cigarettes as well. I mean they both are puffing cigarettes.
Q. So therefore, there is a relationship between the two?
A. There could be.
Q. What I am trying to find out: You have expressed facts in your affidavit, correct?
A. Yes.
Q. That are supposed to be relevant to the issue of class certification, correct?
A. Yes.
Q. You have tried to tell us how different all of these cigarettes are, correct?
A. Yes.
Q. What I am trying to do, as one example of how different they are, you are trying, you have identified the various tar and nicotine yields,

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correct?

A. Yes.

Q. Those tar and nicotine yields are tar and nicotine yields reflected by the standard smoke testing, correct?

A. Yes.

Q. Employed by the FTC and the Tobacco Institute?

A. Yes.

Q. Is this the same smoke testing that Dr. Wakeham concluded did not affect the manner in which people smoked?

MR. HEIM: Objection to the form.

A. I don't understand the question.

Q. You see where it says: "We are concerned if in light of new findings we are too strong in our denunciation of the current test as being unrealistic, some advocates might claim that the numbers are false and misleading"?

A. Yes.

Q. You have no idea what the standard test

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or the present test that Dr. Wakeham is referring to?

A. I don't know what he is referring to by the "present test".

Q. You don't know what the standard smoke test was in 1964?

A. No. I don't.

Q. Who would know at Philip Morris?

A. I don't know.

Q. The numbers reflected in your affidavit, did they encompass, for example, or is it your intent to encompass a time frame in 1974?

A. Where in my affidavit are you referring?

Q. I don't have it in front of me. I thought I would ask the question, because we are just discussing the time period for which you say you don't know what the standard test was?

A. Just so I am clear in my answers, I think we are mixing a lot of things here. At least I'm getting confused about where you are precisely.

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Q. The tar and nicotine numbers --

MR. HEIM: Paragraph ten, by the way, just so you will know.

Q. -- you are referring to in your affidavit, not just in paragraph 10, but I think that there is another reference to the difference between the tar and nicotine content of the various cigarettes. Is that based upon a standard test?

A. Yes.

Q. What is that standard test?

A. The standard test would be the Tobacco Institute Testing Laboratory methodology.

Q. Are you aware of any other standard test that has been used historically other than that test, to determine tar and nicotine yields?

A. No.

Q. Do you have any reason to believe that the standard smoke test referenced in Dr. Wakeham's letter of July 8, 1974, is not the same test employed by the Tobacco Institute presently?

A. I can't speak to what --

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Q. Do you have any reason to believe it is not?

A. I don't have any reason to believe or not believe.

Q. You don't think you have a reason to believe insofar as the fact that you have testified that there has only been one standard test that you have been aware of by which the tar and nicotine numbers were determined?

A. I can't speak for what Dr. Wakeham was referring to here.

Q. Can you possibly imagine any other standard test that he is referring to?

MR. HEIM: I'm going to object to that question, because I don't know that it says I am referring to a standard.

MR. EDELL: It says standard smoke test conditions, and then it is referring to the present test as being unrealistic.

MR. HEIM: I know it says that. It also refers to a June Research Progress Report that we

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don't have here and we don't know what it says, and it is not clear to me that this document says what you are reading into it. Since he is not Dr. Wakeham and can't testify to what Dr. Wakeham had in his mind, I object to trying to get him to tell you what Dr. Wakeham meant.

Q. Have you seen any Philip Morris documents that relate to whether or not the tests employed for identifying the tar and nicotine yields of various cigarettes did not correlate with the manner in which people smoke cigarettes?

A. I don't recall any such documents.

Q. What's your understanding as to the reason why the tar and nicotine yields are -- are they still noted on packs of cigarettes? I haven't had a cigarette in a long time.

A. On some packages, we print the tar and nicotine values as determined by the TITL methodology, and we are required to print those tar and nicotine yields in our outdoor and magazine advertising.

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Q. What is your understanding as to why the tar and nicotine numbers are printed on the packs of certain cigarettes?

A. I think that early on, that was the traditional way for the Readers Digest and other entities, including the government, to report the numbers. They were reported in a ranked order list of tar delivery and other such things. This was to provide consumers with information.

Q. Information relevant to what?

A. To the tar and nicotine delivery as determined by this method.

Q. It has nothing to do with what the smoker would be expecting to receive from the smoking of the cigarette, correct, in terms of tar and nicotine?

A. I think it is the number determined by this methodology.

Q. But the purpose for Philip Morris ever placing those numbers on their packs of cigarettes had nothing to do with whether their consumers

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would believe that they are getting less tar and nicotine by smoking that cigarette, correct?

MR. HEIM: Object to form.

A. Shall we try that again.

Q. I don't know why it is so perplexing.

A. Well, it is.

Q. Okay. Then I will try to make it more understandable.

A. Thank you.

Q. Is Philip Morris required today to put tar and nicotine yields on packs of cigarettes?

A. I don't believe so.

Q. Does Philip Morris presently put tar and nicotine yields on packs of any of its cigarettes?

A. Yes.

Q. Why?

A. I don't know.

Q. I'll show you a document marked as PDX-0166, appears to be portions of a document that is titled one-three-five year projections of master projects. Dated November 2, 1973.

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Do you see -- on the third page, is it, it references a safe cigarette?

A. There is an item about the development of a safe cigarette.

Q. Are you familiar with efforts in this one-three-five year research document that refers to this or relates to this development of a safer cigarette or a safe cigarette? It says "safe cigarette", doesn't it?

MR. HEIM: Yes. It says "safe cigarette."

Q. It also says that by definition they are talking about a cigarette which produced a smoke condensate that did not have a biological activity on the backs of mice; is that correct?

A. Would you like me to read it?

Q. Please. I don't have a copy of it.

A. It says: A safe cigarette defined as one showing little or no carcinogenic activity when measured by mouse skin painting is the objective of a long-term research program.

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Q. Are you familiar with such a long-term research program?

A. No.

Q. Are you familiar with any technology developed by Philip Morris with respect to cigarette design to reduce the carcinogenic effect of smoke condensate in mice painting studies?

(The record was read by the reporter.)

A. No. I am not.

Q. Who would be aware of that research?

A. Of the research that is referred to here?

Q. Yes, to develop a safe cigarette by Philip Morris.

A. I don't know. I don't know who wrote this.

Q. I don't either. Those are the few pages that were provided to me with the front page of that document.

A. I don't know who did this, who was responsible with this work.

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MR. HEIM: I gather you are satisfied it was a Philip Morris document.

MR. EDELL: I'm pretty positive it is. I can tell you if you hand it to me by the Bates numbers.

Yes. This is a Philip Morris document. Is there an issue?

MR. HEIM: I just didn't know. I understand this was the way it was provided to you. I couldn't find anything on it that identified it. I'm satisfied with your representation.

Q. Who was working in 1976 in the Research & Development Department at Philip Morris who would know about such research if it was performed?

A. I don't know. I came to work at Philip Morris in June of '76.

MR. HEIM: Did you mean to say '73 or '76?

MR. EDELL: I meant '76, it identifies these as one, three and five-year projects, so I

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thought it finished over a period of time.

A. I don't know.

Q. I'm going to show you PDX-0225. Were you familiar with the Behavioral Research Laboratory of Philip Morris?

A. I have to look at this.

Q. Have you ever heard of the Behavioral Research Laboratory of Philip Morris?

A. I don't believe so, no.

Q. You were there in 1979, Philip Morris?

A. I worked at Philip Morris in 1979.

Q. Were you aware they were doing an inhalation monitoring program at the time?

A. No.

Q. You were aware they were investigating the social psychological aspects of smoking?

A. No.

Q. You weren't aware that they were conducting research into the physiological aspects of smoking, correct?

A. No.

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Q. What about the nicotine receptor program they had going at the University of Rochester; are you familiar with that?

A. No.

Q. Had you ever heard of nicotine receptors?

A. Possibly with respect to taste.

Q. I'll show you a document marked as 0222.

Who is J. L. Charles?

A. Jim was the vice-president of research at the Research & Development Department.

Q. This is a memo from Mr. or Dr. Charles?

A. Dr. Charles.

Q. Dr. Charles to Dr. Seligman March 18, 1990, regarding the nicotine receptor program at the University of Rochester, you see where Dr. Charles says: "Nicotine is a powerful pharmacologic agent with multiple sites of action and main the most important part of cigarette smoke"?

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A. Yes. I do.

Q. Do you see where Dr. Charles is referencing "nicotine titration"?

A. Yes. I see that.

Q. Same paragraph.

A. I see the words "nicotine titration here.

Q. You had not been familiar with that phrase previously; is that correct?

A. Previously to what?

Q. Prior to today?

A. I may have heard that term. I am certainly not in a position to comment on what it means.

Q. Do you know whether or not nicotine titration has anything to do with the amount of tar and nicotine that a smoker will take out of a particular cigarette?

A. No. I don't.

Q. Do you see on page two where it says "in summary the nicotine receptor program at the

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University of Rochester is an integral part of our overall Nicotine Program"?

A. I see that, yes.

Q. "The combination of basic research on pharmacology of the nicotine receptor combined with the capability to screen nicotine analogs for CNS activity, that is central nervous system activity, compliments our internal synthetic and behavioral efforts in the Nicotine Program."

You see that?

A. Yes. I do.

Q. Are you aware of what Dr. Charles is referring to when he is talking about Philip Morris' internal synthetic and behavioral efforts in the Nicotine Program?

A. I am not.

Q. Is it fair to say you know little if anything about the research conducted by Philip Morris into the physiological or pharmacological aspects of cigarette smoke; is that correct?

A. That's correct.

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Q. Are you familiar with a Behavioral Pharmacology Laboratory at Philip Morris?

A. Doesn't ring a bell with me.

Q. Show you a document marked PDX-0229. Who is Victor J. DeNoble?

A. I don't know.

Q. Never heard of him?

A. I have heard of him.

Q. In what context?

A. I have read about him in the newspaper as being a former employee.

Q. Did you do anything to confirm whether he was or wasn't, speak to anybody at work to see whether or not, in fact, this Victor J. DeNoble had been employed at Philip Morris?

A. I did not request that information. I'm a curious person.

Q. You strike me as a curious person. I thought if you saw this in this newspaper, you might go back and say what's up with this DeNoble thing or something to that effect?

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A. I have a job to do, and I just don't spend a lot of time on what is going on in the newspaper.

Q. No time for small talk?

A. There is not much time for small talk.

Q. Reviewing this document doesn't refresh your recollection of there being a Behavioral Pharmacology Laboratory at Philip Morris; is that correct?

A. Would you like me to review this?

Q. If you need to, if you think it will help refresh your recollection.

A. I don't think it will help refresh my recollection.

Q. Let me show you a document marked as PDX-0223. It appears to be a memo from Dr. Dunn dated October 9, 1981, project title: Smoker Psychology.

Were you aware of any work being performed at Philip Morris with respect to the effects of cigarette smoking on the brain steam

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auditory evoked potential?

A. I don't believe so, no.

Q. Do you know who F. Gulletta was?

A. I believe that refers to Frank Gulletta. I don't know what his current title is.

Q. Is he in research?

A. I believe so, I don't know for certain.

Q. This document does reflect that there was a study by Philip Morris regarding the effects of cigarette smoke on the brain steam auditory evoked potential?

A. That's what it states, yes.

Q. Do you see also on the first page of the document a reference to the ongoing study of the changes in smoke patterns as it focus is on changes in nicotine delivery?

A. Yes.

Q. Were you aware that study was being performed at Philip Morris?

A. No. I was not.

Q. Do you know Jan Jones?

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A. Yes. I do.
Q. Who is Jan Jones?
A. Dr. Jan Jones, she is today conducting consumer research. She is a consumer researcher, in my view.
Q. Do you know what her position was in 1981?
A. I do not.
Q. Are you familiar with an S. Dunn?
A. No.
Q. I think it is a Sandra Dunn.
A. Doesn't ring a bell, no.
Q. Show you a document marked as PDX-0234, appears to be a letter from Dr. Dunn to Dr. Osdene, November 1, 1991. Does this refresh your recollection that there had been an ongoing behavioral research laboratory at Philip Morris?
A. I'm not aware of that laboratory.
Q. Do you see in the first paragraph where it says: "Over the years, the behavioral research lab has stated its mission to be three-fold: To

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study why, how and what cigarette smokers smoke."

A. Yes. I see that.

Q. Were you familiar with research being conducted by Philip Morris in that regard?

A. No. I'm not.

Q. I'll ask you to turn to page two, where it has the list of the various researchers, Sandra Dunn, research scientist. Never heard of her?

A. No.

Q. We've spoken about Frank Gulletta?

A. Yes.

Q. Cindy Schultz?

A. I have not heard that name.

Q. Paul M. Mele?

A. A name in the newspaper with DeNoble.

Q. They are listed in their area of specialty as behavioral pharmacology; is that correct, Dr. Demobile and Mele?

A. And what was the question?

Q. There is a specialty listing?

A. Yes. It says psychology specialty.

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Q. And then it has under that category "Behavioral Pharmacology" for DeNoble, Mele and Dragan"?

A. That's what this appears to say. I thought your question was are they specialists.

Q. It says: "Our plans and objectives are arranged hereafter by discipline accompanied by a brief descriptive statement which attempts to characterize the specialty."

It talks about the various different research that was being performed.

Were you aware that they were studying the amount of nicotine in the saliva and blood of cigarette smokers?

A. No.

MR. HEIM: You want to point us to particular part of this document?

MR. EDELL: Not really. He says he wasn't aware of it. Just for your edification, it is on page five.

MR. HEIM: Under planned studies?

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MR. EDELL: Planned studies. This study and subsequently Dr. Ryan was designated as a computer software person for BRL.

Q. You weren't even aware that that lab existed; is that right?

A. No. I was not.

Q. Were all these various people discussed, Sandra Dunn and -- you don't know who Sandra Dunn is, Frank Gulletta, physically where were they located?

A. When?

Q. In 1980?

A. I have no idea.

Q. Where is Frank Gulletta located today?

A. I don't know where his office or laboratory or whatever it is is located.

Q. Where is the research lab located?

A. Right down on 95 here.

Q. Is it located in proximity to where you work?

A. Yes.

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Q. How long have you been working in that building?

A. In which building?

Q. That is probably an erroneous assumption. Did you work in the research building?

A. The research building is divided up into about, I don't know, five or six different buildings.

Q. Different work goes on in different buildings; is that correct?

A. Yes. That would be fair to say.

Q. During the period 1988 through 1993, did you say? Or is it 1995, you worked in Research & Development; is that correct?

A. Yes.

Q. Did you work in any of the research buildings?

A. Yes.

Q. Were any of the people who we discussed today, Osdene, or Seligman, any of those people located in that building? I'm trying to figure out

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physically where all these people were who were doing all this research that you were unaware of.

A. There is a time issue. This goes back to 1981, and I think we need to get straight on what it is we are talking about. I wasn't, in fact, I don't think the building I currently work in was built in 1981. I don't think we had physically moved in it in that time.

Q. Let's talk about 1981 then.

A. Okay.

Q. All this research that was being done at that time, you were unaware of that we have just discussed; is that correct?

A. Yes.

Q. Physically, where were these people who were conducting this research that you were unaware of?

MR. HEIM: I am going to let you answer the question. I want to object to all the research that we discussed as having been done or however you put it, because it is not clear to me that

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these documents show that the research was, in fact, done. So I note that objection.

A. Yes. As I said, I don't know what, I was not aware whether or not this research was going on, I don't have any knowledge of where it was taking place.

Q. Where were all of these people located who purportedly were involved in this investigation, these various investigations?

A. I don't know. Remember I said that the research complex is divided up into a number of different buildings. Which one these people were in, I don't know.

Q. Was there restricted access to any of these buildings?

A. I am assuming there were security guards and so forth at these buildings.

Q. You could have gone into any one of the buildings?

A. At that time, I went into some of the research buildings, where I had a reason to be.

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Q. But you never saw any of this or heard any of this biological research being performed, correct?

A. No.

Q. You never heard any research into the chemical composition of the cigarette smoke, correct?

A. You mean in this time frame; that is where you are?

Q. Yes.

A. No. I did not.

Q. Were you aware at any point in time that they were doing research into the chemical composition of cigarette smoke?

A. I think we talked about that this morning.

Q. You said you saw lists?

A. I have seen lists of that, and I referred to some chemical composition with respect to the taste of smoke.

So the question is?

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Q. Were you aware that research was being conducted by Philip Morris, regarding the constituents of smoke?

MR. HEIM: Asked and answered.

A. Yeah, if the research entails determining what those constituents are, yes, I was aware of those determinations being made.

MR. EDELL: Thank you. It has been a lot of fun.

(Examination concluded -- 3:45 p.m.)

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STATE OF MARYLAND SS:

I, E. D. SMITH, RPR, CRR, a Notary Public of the State of Maryland, do hereby certify that the within named, JAMES MYRACLE, JR., personally appeared before me at the time and place herein set out, and after having been duly sworn by me, was interrogated by counsel.

I further certify that the examination was recorded stenographically by me and this transcript is a true record of the proceedings.

I further certify that the stipulations contained herein were entered into by counsel in my presence.

I further certify that I am not of counsel to any of the parties, nor an employee of counsel, nor related to any of the parties, nor in any way interested in the outcome of this action.

As witness my hand and notarial seal this 29th day of April, 1997.

My commission expires November 1, 1998

E. D. Smith

Notary Public

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CERTIFICATE OF DEPONENT

I hereby certify that I have read and examined the foregoing transcript, and the same is a true and accurate record of the testimony given by me.

Any additions or corrections that I feel are necessary, I will attach on a separate sheet of paper to the original transcript.

_____

James Myracle, Jr.

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